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Josef Fuerlinger - December 3, 2004  
Examination by Mr. Cerski

12:22:35 1 Q. Okay. Who makes the determination, then,  
12:22:39 2 whether a contract is of significant enough  
12:22:41 3 importance that it needs to be approved by  
12:22:44 4 Bombardier?

12:23:20 There is a certain level of each department  
12:23:26 which can have authority up to the general manager -  
12:23:29 7 THE WITNESS: General manager?

12:23:31 8 THE INTERPRETER: Uh-huh.  
12:23:32 9 THE WITNESS: And  
if he cannot -- if

12:23:35 10 it's beyond his limit, he has to go back to the  
12:23:38 11 supervisory board and the supervisory board has to be  
12:23:40 12 informed.

12:23:42 13 Q- (BY MR. CERSKI) the general manager  
12:23:44 14 would not make that decision?

12:23:46 15 MR. KELLY: Object to form. What  
12:23:47 16 decision?

12:23:49 17 Q. (BY MR. CERSKI) the general  
12:23:50 18 manager -- would the general manager make the

12:23:54 19 decision as to whether a contract should be reviewed  
12:23:57 20 by Bombardier?

12:23:59 21 A. No, that's not what I'm saying.  
12:24:01 22 Q- Okay.  
12:24:03 23 A. The general manager has a certain limit of

12:24:07 24 authority and financial obligations. If it's beyond  
12:24:15 25 that he has to go back to the supervisory board and

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12:24:18 1 get the approval from the supervisory board. That's  
12:24:22 2 my understanding how the Austrian corporation works.

12:24:25 3 Q- Okay. But you as a vice president of

12:24:23 4 aircraft engines at the time -- I'm aware of that -  
12:24:35 5 would not go to the supervisory board, would you?  
12:24:38 6 A. I cannot go to the supervisory board.  
12:24:40 7 Q. You would go to the general manager?  
12:24:42 8 A. I go to the general manager.  
12:24:44 9 Q. And then he would go to the supervisory

12:24:48 10 board, if necessary?  
12:24:48 11 A. Correct.

12:24:51 12 Q. Does Rotax receive infusions of cash from  
 12:24:56 13 Bombardier?  
 12:24:58 14 A. I don't know.  
 12:25:00 15 Q. Is there a person at Rotax that would know  
 12:25:02 16 that?  
 12:25:05 17 A. Finance -- finance department.  
 12:25:06 18 Q. Is there a vice president for finance?  
 12:25:10 19 A. Yes.  
 12:25:10 20 Q. And who is that person?  
 12:25:21 21 A. At which time period are you looking?  
 12:25:26 22 Q. Well, if it's different than the time  
 12:25:29 23 period -- well, actually, I guess it would probably  
 12:25:32 24 be current more so than a time period. Current vice  
 12:25:36 25 president for finance?  
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 Examination by Mr. Cerski

12:25:39 1 MR. KELLY: In terms of who do we ask  
 12:25:41 2 about -  
 12:25:42 3 Q. (BY MR. CERSKI): Yeah. If I was going  
 12:25:44 4 to -- if I needed to ask someone, I would ask whoever  
 12:25:48 5 the current person is.  
 12:25:51 6 A. As of today?  
 12:25:53 7 Q. Yes.  
 12:25:54 8 A. Peter Oelsinger.  
 12:25:55 9 Q. Can you spell the last name.  
 12:25:57 10 A. O -- with two dots -- L-S-E-N-G-E-R (sic).  
 12:26:15 11 Q. who owns the property that Rotax facilities  
 12:26:18 12 are on in Austria?  
 12:26:20 13 A. Rotax.  
 12:26:39 14 Q. Does Rotax share a common pool of money  
 12:26:43 15 with any other Bombardier entity?  
 12:26:50 16 A. This is beyond my knowledge.  
 12:26:53 17 Q. Would the vice president for finance be the  
 12:26:55 18 person for that as well?  
 12:27:02 19 A. Yes.  
 12:27:03 20 Q. How often do executives from Bombardier  
 12:27:07 21 visit Rotax?  
 12:27:14 22 A. MR. KELLY: Within the relevant time  
 12:27:15 23 Q. period, right?  
 12:27:16 24 A. MR. CERSKI: huh, yes.  
 12:27:37 25 THE WITNESS: You're talking about

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Examination by Mr. Cerski

12:27:39 1 executives of Bombardier, Inc.?

12:27:41 2 Q. (BY MR. CERSKI) But when I refer to

12:27:43 3 Bombardier, Inc., Counsel have -- has told me that

12:27:49 4 Bombardier, Inc., applies to the executives of

12:27:53 5 Bombardier Recreational Products division because

12:27:54 6 it's **the same company**. So what I'm referring to is

12:27:59 7 Mr. Beaudoin at BRP or the president of Bombardier,

12:28:05 8 Inc. That's what I'm referring to.

12:28:07 9 MR. CERSKI: Do you want to -

12:28:08 10 MR. KELLY: No. I think within the

12:28:10 11 relevant time period, Bombardier Recreational

12:28:15 12 Products was part of Bombardier, Inc., correct?

12:28:18 13 (Witness nods)

12:28:20 14 MR. KELLY: I think that's what he

12:28:21 15 means and he's asking how often during that time

12:28:25 16 period there would be visits from Bombardier, Inc.

12:28:27 17 MR. CERSKI: Yeah.

12:28:29 18 MR. KELLY: At any level?

12:28:30 19 Q. (BY MR. CERSKI): Yes. Well, executives

12:28:33 20 actually.

12:28:36 A. on a regular basis by the Austrian law calls

1.2:28:39 22 for a shareholder meeting -- or for a supervisory

12:28:44 23 board meeting. By my recollection it's minimum four

12:28:49 24 times. And of course, this is a function of the

12:28:53 25 supervisory board meeting executives of Bombardier,

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12:28:58 1 Inc., as representative of the shareholder -

12:29:03 2 shareholder would meet in Austria.

12:29:06 3 Q. Do executives of Bombardier, Inc., visit

12:29:09 4 the Rotax -- visit Rotax in addition to those

12:29:14 5 supervisory meetings?

12:29:16 6 A. Might not keep any records

12:29:24 7 who is coming, who isn't coming.

12:29:27 8 Q. I mean, do you remember them there other

12:29:29 9 than supervisory board days?

12:30:09 10 A. As I said, it might be in addition one

or

12:30:15 11 two times.

12:30:15 12 Q. How often do executives of Rotax visit

12:30:18 13 Bombardier, Inc.?

12:30:21 14 A. I don't know.

12:30:47 15 Q. well, in any given year, I mean, what's

the

12:30:50 16 average amount of times that you've visited

12:30:53 17 Bombardier, Inc.?

12:30:55 18 A. I visit Bombardier, Inc.?

1.2:30:57 19 Q. Have you been?  
 12:31:43 20 A. Not I'm recalling.  
 12:31:44 21 Q- Okay. You stated earlier that you  
 reviewed  
 12:31:49 22 the deposition that you gave in Kozial v. Bombardier.  
 12:31:54 23 That was held in Montreal, Canada. Did you visit  
 12:31:57 24 Bombardier on that visit?  
 12:31:58 25 A. No.

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Josef Fuerlinger - December 3, 2004  
 Examination by Mr. Cerski

12:31:59 1 Q- When you say you don't know how many times  
 12:32:03 2 executives from Rotax visit Bombardier, Inc., can you  
 12:32:10 3 clarify whether executives from Rotax do or do not  
 12:32:14 4 visit Bombardier, Inc.?  
 12:32:18 5 MR. KELLY: Ever?  
 12:32:19 6 MR. CERSKI: within the time  
 12:32:22 7 period, at least.  
 12:32:24 8 MR. KELLY: Limit -- okay.  
 12:32:55 9 THE WITNESS: I cannot. It's beyond  
 12:32:57 10 my -- my knowledge.  
 12:33:04 11 Q. (BY MR. CERSKI): So your testimony is that  
 12:33:07 12 you don't know whether or not executives from Rotax  
 12:33:10 13 visited Bombardier, Inc.?  
 12:33:16 14 A. I do not the travelling planning of the  
 12:33:20 15 executives, so I don't know if they have been gone or  
 12:33:23 16 not gone, so I don't know.  
 1.2:33:36 17 Q- Earlier today you gave me certain areas of  
 12:33:40 18 your business, water craft, ATV, snowmobiles,  
 12:33:45 19 motorcycles, industrial and aircraft.  
 12:33:55 20 Starting with 100 percent, can you  
 12:33:57 21 break down for me the division with the -- can you  
 12:34:04 22 assign a percentage for revenue for each of these  
 12:34:08 23 divisions in a year?  
 12:34:22 24 A. In which time frame are we talking?  
 12:34:24 25 Q. 1.998 to 2000 -- through 2002.

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 Examination by Mr. Cerski

12:34:30 1 A. Well, this has been -- made varied in the  
 12:34:34 2 years, so I can give you only an -- an estimate what  
 12:34:40 3 would be -- in, say, an average.  
 12:34:42 4 Q. Okay. That's fine.  
 12:34:43 5 A. Not having the details in front of me.  
 12:34:45 6 Q. That's fine.  
 12:35:06 7 A. The products which have been purchased by  
 12:35:08 8 Bombardier, Inc., containing such engines for water  
 12:35:18 9 craft, ATV and snowmobiles would be less than 50 -  
 12:35:24 10 less than 50 percent of internal for Rotax.  
 12:35:26 11 Q- When you say less than 50 percent, are we  
 12:35:30 12 in the 40s, the 30s?  
 12:35:31 13 A. Between 40 to 45, in that range.  
 12:35:37 14 Q. And how about the motorcycle business?  
 12:36:03 15 A. it would be around -- in the average 45 -  
 12:36:21 16 40 percent, 40 to 45 percent.

12:36:27 17 Q- And industrial, the industrial engines?  
 12:36:33 18 A. Very small, maybe one to two percent.  
 12:36:50 19 Q- Arid the aircraft division?  
 12:36:52 20 A. Would be approximately the remaining rest.  
 12:36:54 21 Q. So between -- somewhere between like 10 and  
  
 12:36:58 22 20 percent of that nature?  
 12:36:59 23 A. No, not at -- it would be in the magnitude  
 12:37:04 24 of five to six percent. That varies in the - in a  
 12:37:21 25 year, so it's --

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 Examination by Mr. Cerski

12:37:25 1 Q- Okay. So by far the two major aspects of  
 Rotax's business is its business with Bombardier,  
 12:37:35 3 Inc., and  
 th the motorcycle aspect?  
 12:37:42 4 A. Correct.  
 12:37:42 5 Q. Okay. How many aircraft engines are sold  
 12:37:53 6 in a year?  
 12:38:02 7 A. In an average around 5,000.  
 12:38:10 8 Q. How many of those aircraft engines are sold  
 12:38:12 9 to Kodiak?  
 12:38:19 10 A. I don't recall the exact numbers, how many  
 aircraft engines Kodiak Research, Nassau, Bahamas,  
 has purchased in Australia, but my guess would be 30 to  
 12:39:09 11 30 percent.  
 12:39:10 12 Q. Of the 5000?  
 12:39:12 13 A. Yeah.  
 12:39:15 14 Q- And how about Rotech?  
 12:39:38 15 A. By my best recollection it would be maybe  
 12:39:42 16 five to eight percent.  
 12:39:48 17 Q. And this five to eight percent, is that  
 12:40:06 18 20 an uncertified engines?  
 12:39:57 19 A. would contain both.  
 12:40:06 20 Q. Are you able to give me a breakdown of this  
 five percent between the certified and uncertified?  
 12:40:45 21 A. The certified market makes very small  
 12:40:48 22 numbers. It's very insignificant.

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 Examination by Mr. Cerski

12:40:55 1 Q. Well, how about of the 5,000, how many -  
 12:41:00 2 how many engines on average are certified?  
 12:41:04 3 A. Two percent, roughly. In a magnitude.  
 12:41:36 4 Q. And how many distributors of certified  
  
 12:41:42 5 engines do you have?  
 12:41:46 6 A. Sorry, sir. Can you say that again.  
 12:41:50 7 Q. Sure.  
 12:41:51 8 (Interpreter interprets)  
 12:43:59 9 THE WITNESS: We make no distinction  
 12:42:02 10 with -- between certified and non-certified  
 12:42:05 11 distributor.  
 12:42:05 12 Q. (BY MR. CERSKI): Well, you do as it relates

12:42:08 13 to the United States because Kodiak does uncertified  
 12:42:14 14 engines, whereas Rotech has the certified market for  
 12:42:18 15 the United States.  
 12:42:19 16 MR. KELLY: Is there a question?  
 12:42:22 1.7 Q\_ (BY MR. CERSKI): Yeah. So the question is:  
 12:42:24 18 Is that the only -- with regards to the territory for  
 12:42:25 19 the United States the only distinction where you  
 12:42:28 20 actually make a difference between certified and  
 12:42:31 21 uncertified?  
 1-2:42:32 22 MR. KELLY: Objection in that it's  
 12:42:35 23 your testimony at this point that -- so i'm just  
 12:42:39 24 suggesting -  
 12:42:40 25 MR. CERSKI: That's fine.

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12:42:42 1 MR. KELLY: just suggesting that  
 12:42:42 2 you ask him if that's the base.  
 12:42:45 3 MR. CERSKI: Sure.  
 12:42:45 4 MR. KELLY: then you can proceed.  
 12:42:53 5 MR. CERSKI: Sir -  
 12:42:55 6 MR. KELLY: don't have to show him  
 12:42:56 7 the contract, just ask it.  
 12:42:59 8 MR. CERSKI: Yeah, I'll ask him.  
 12:43:02 9 Q- (BY MR. CERSKI): Does Rotech -- does Rotech  
 12:43:08 10 distribute certified engines to the United States?  
 12:43:30 11 A. I don't know.  
 12:43:39 12 MR. CERSKI: I'm going to mark the  
 12:43:41 13 Kodiak contract as Exhibit 20, the Rotech contract as  
 12:43:45 14 Exhibit 21.  
 12:43:54 15 For the court reporter it's  
 12:43:56 16 R-O-T-E-C-H, if you're -  
 12:44:03 27 THE COURT REPORTER: Thanks.  
 12:44:03 18 Q. (BY MR. CERSKI): Under the definition  
 12:44:05 19 section on both of these documents there's a  
 12:44:09 20 reference to territory, and the question is: On the  
 12:44:36 21 Rotech document it specifically says that Rotech is a  
 12:44:39 22 distributor for Canada and for the United States as  
 12:44:41 23 to certified engines, and I believe that the Kodiak  
 12:44:46 24 document territory refers to Kodiak being a  
 12:44:50 25 distributor for the United States for uncertified

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12:44:53 1 engines, I believe?  
 12:45:10 2 A. How should I now answer your question?  
 12:45:14 3 Q. well, my question is: You would agree with  
 12:45:17 4 me that with regard to the United States there is a  
 12:45:19 5 distinction made between certified and uncertified  
 12:45:23 6 engines with regard to Rotech and Kodiak; is that  
 12:45:27 7 correct?  
 12:45:28 8 A. I can only refer to the contract, what the  
 12:45:32 9 contract is saying, and I haven't -- the contract is  
 12:45:38 10 Kodiak Research Canada, Limited, VA --

12:45:43 11 MR. KELLY: That's the Rotech  
 12:45:44 12 contract.  
 12:45:45 13 MR. CERSKI: Oh, did I give him both  
 12:45:47 14 of those?

12:45:48 15 Q. (BY MR. CERSKI) Is one's Rotech.  
 12:45:51 16 A. Sorry, I said -  
 12:45:52 17 Q. Kodiak. I'm sorry. That one's Rotech.

12:45:55 18 This one's Kodiak.  
 12:45:58 19 A. That ~~Canada~~ <sup>is</sup> limited contract here  
 12:46:01 20 and the territory is  
 12:46:19 21 MR. KELLY: Well, you really want him  
 12:46:20 22 to look at Exhibit A, don't you?  
 12:46:23 23 THE WITNESS: Yeah. It's -  
 12:46:25 24 MR. KELLY: The products?  
 1.2:46:26 25 THE WITNESS: It's the product.

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 Examination by Mr. Cerski

12:46:27 1 MR. CERSKI: Oh, I'm sorry. I'm not  
 12:46:29 2 sure. I just assumed it would be in these  
 contracts.  
 12:46:40 3 ~~THE~~ <sup>WITNESS</sup> to the  
 12:46:42 4 contract, he can distribute the products which are  
 12:46:47 S listed in the Appendix A.

12:46:58 6 MR. ~~CERSKI~~ <sup>IS</sup> Rotech. This is  
 12:47:00 7 Kodiak.  
 12:47:00 8 THE WITNESS: And in the Kodiak  
 12:47:17 9 Research there is also listed the product under the  
 12:47:21 10 Exhibit A.  
 12:47:24 11 Q- (BY MR. CERSKI): And they appear to be both  
 12:47:25 12 the same?  
 12:47:26 13 A. And they are both the same.  
 12:47:28 14 Q. Okay. Then my question is -- if you can  
 12:47:31 15 flip back to the front. Actually, can I have the  
 12:47:34 16 contract real quick.  
 01:01:01 17 (Witness complies)  
 12:47:44 18 MR. KELLY: This is -  
 12:47:45 19 Q. (BY MR. CERSKI): Now, in 2001, you were the  
 12:47:51 20 vice president for the aircraft engines is that  
 21 correct?

12:47:52 22 A. That's correct.  
 12:47:52 23 Q- So since -- when you were vice president  
 12:47:55 24 this contract was entered into, why is there a  
 12:47:S9 25 distinction made in the territory section as it

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12:48:02 1 relates to the United States?

12:48:04 2 MR. KELLY: The territory section  
 12:48:06 3 being what section?  
 12:48:08 4 MR. CERSKI: Section one definition --

12:48:10 S or section definitions two. That's what this is.

12:48:16 6 (Mr. Cerski indicates)  
 12:49:02 7 THE WITNESS: My recollection is that  
 12:49:03 8 because he asked for it, to get the certified market.  
 12:49:13 9 Q. (BY MR. CERSKI): Does that mean that  
 12:49:15 10 they're -- does that mean that Kodiak and Rotech both  
 12:49:19 11 serve the certified market for the United States?  
 12:49:41 12 A. There's no restriction on the Kodiak  
 12:49:51 13 Research, Limited, Nassau, Bahamas, contract.  
 12:49:54 14 Q. Okay. So that would mean that there are  
 12:49:56 15 two distributors who can certify engines in the  
 12:49:59 16 United States, at least two that we see right here?  
 12:50:04 17 A. Yes.  
 12:50:06 18 What are Rotax's markets?  
 12:50:28 19 MR. KELLY: Object to the form.  
 12:50:35 20 THE WITNESS: Rotax sells product  
 12:50:37 21 ex-works to some customers such as Bombardier, Inc.,  
 12:50:45 22 or BMW.  
 12:50:48 23 Q. (BY MR. CERSKI): But what do you consider  
 12:50:50 24 your market to be? Who are you targeting?

12:50:54 2S MR. KELLY: Object to the form.

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12:51:06 1 THE WITNESS makes engines for  
 12:51:09 2 special applications such as in water crafts or  
 12:51:19 3 motorcycling or aircraft.  
 12:51:22 4 Q. (BY MR. CERSKI): Okay. Let's talk  
 12:51:23 S specifically right now with regard to the aircraft  
 12:51:27 6 engines. What are your markets for the aircraft  
 12:51:31 7 engines?  
 12:51:33 8 MR. KELLY: Object to the form. What  
 12:51:35 9 do you mean by "market?"  
 12:51:38 10 MR. CERSKI: Market, I mean a  
 12:51:39 11 territory --  
 12:51:40 12 MR. KELLY: You mean a geographical  
 12:51:42 13 territory? Do you mean --  
 12:51:44 14 MR. CERSKI: Yeah. What countries,  
 12:51:45 15 what areas does he consider a market from a marketing  
 12:51:49 16 perspective?  
 12:S1:51 17 Q. (BY MR. CERSKI): In your development of new  
 12:51:52 18 business, if you were trying to develop new business  
 12:51:55 19 in the aircraft section, what markets would you look  
 12:51:58 20 to develop that business? So what are your  
 12:S2:01 21 markets? That's what I'm interested in.  
 12:52:04 22 MR. KELLY: Object to the form.  
 12:52:06 23 THE WITNESS: Rotax makes engines  
 12:52:13 24 for -- as I said before, for different applications.  
 12:52:17 25 And taking the aircraft engines, Rotech has

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12:52:22 1 established authorized distributors for Rotax  
12:52:31 2 aircraft engines worldwide which are having certain  
12:52:36 3 defined territories where they can sell products.  
12:52:55 4 Q- (BY MR. CERSKIE): Do the distributors -  
12:52:58 5 does your entire distribution network, all of your  
12:53:01 6 distributors, does it encompass **every country in the**  
12:53:06 7 world?  
12:53:18 8 A. I can only speak for the Rotax aircraft  
12:53:21 9 engine distributors.  
12:53:22 10 Q. O],ay. That's fine.  
12:53:24 11 A. There may be some countries where this  
12:S3:26 12 product is not used or not -- not -- not covered, the  
12:S3:41 13 country's not covered.  
12:53:44 14 Q. Are there certain countries that you feel  
12:53:47 15 are strong territories from a marketing perspective  
12:53:50 16 to sell engines?  
12:53:52 17 MR. KELLY: Object to form.  
12:54:08 18 THE WITNESS: The authorized  
12:54:09 19 distributors are the ones who is responsible for the  
12:54:12 20 market.  
12:54:12 21 Q- (BY MR. CERSKIE): Okay. But Rotax is the  
12:54:16 22 one who assigns the market to the distributor; is  
12:54:19 23 that correct?  
12:54:37 24 A. Well, that's an agreement between the  
12:54:39 25 distributor and -- and Rotax.

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Examination by Mr. Cerski

12:54:45 1 Q- No, I understand that. But who decides  
12:54:48 2 who's going to get what territory?  
12:55:03 3 MR. KELLY: I think he answered, and I  
12:55:04 4 think you changed the question a little bit but  
12:55:07 5 that's -- I don't want to repeat his answer, but it  
12:55:09 6 was the answer that he just gave.  
12:55:11 7 Q. (BY MR. CERSKI): Who wrote this contract?  
12:55:14 8 A. A lawyer.  
3-2:55:1-5 9 Q. Did Rotax write this contract?  
12:55:18 10 A. It was a lawyer hired by Rotax who wrote  
12:55:22 11 the contract.  
12:55:22 12 Q. For Rotax?  
12:55:23 13 A. For Rotax.  
12:55:25 14 Q. And this area called "Territory," who  
12:55:29 15 decided what the area was going to be?  
12:55:33 16 A. That's a result of the mutual discussion  
12:55:37 17 between Rotax and the distributor.  
12:55:43 18 Q. Will Rotax-- strike that. I'm going to  
12:55:52 19 give you a hypothetical.  
12:55:53 20 If I wanted to become a distributor of  
12:55:56 21 Rotax engines for the United States, could I be,  
12:55:58 22 assuming I meet the qualifications?  
12:56:02 23 MR. KELLY: Object to form.  
12:56:05 24 THE WITNESS: We have a very long  
12:S6:21 25 business relationship with Rotax Research --

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12:56:26 1 Canada -- sorry, I **mixed the** name for it -- Kodiak  
12:56:31 2 Research, Limited, Nassau, Bahamas, and he  
12:56:36 3 performed -- he does a good job and so we would have  
12:56:43 4 no reason to change the distributor.  
12:56:52 5 Q. (BY MR. CERSKV: And the contract states  
12:56:54 6 that the distributor will be -- the sole distributor  
12:56:57 7 in that territory unless Rotax -- unless Rotax sees  
12:57:06 8 that there's a need for a second distributor; is that  
12:57:09 9 correct?  
12:57:13 10 MR. KELLY: Object to the form. You  
12:57:16 11 can answer.  
12:57:19 12 THE WITNESS: As I said, we are  
12:57:21 13 satisfied with the performance of our authorized  
12:57:25 14 distributor for Rotax aircraft engines, Kodiak  
12:57:29 15 Research, Limited; and so, therefore, we did not  
12:57:34 16 exercise our reserved rights here of the contract to  
12:57:38 17 establish a second distributor.  
12:57:47 18 Q. (BY MR. CERSKI): The distributors -- well,  
12:57:48 19 strike that.  
12:57:50 20 The idea of the distributors is to  
12:57:52 21 serve certain markets; is that correct?  
12:58:06 22 A. Whatever you mean under "serve," that's the  
12:58:09 23 meaning of a distributor in a broader sense.  
12:58:11 24 Q. And did Rotax develop this distribution  
12:58:15 25 network?

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Examination by Mr. Cerski

12:58:21 1 MR. KELLY: Object to the form.  
12:59:05 2 I ~~HAVE~~ ~~WITNESS~~ulties to  
12:59:06 3 understand the intent of the question.  
12:59:09 4 THE INTERPRETER it in  
12:59:10 5 German? Do you know what it means?  
12:59:16 6 (Translator and witness confer in  
12:59:19 7 German)  
12:59:19 8 THE INTERPRETER: Mr. Fuerlinger asked  
12:59:29 9 what it means, what the question means, but doesn't  
12:59:33 10 understand the intention behind the question.  
12:59:36 11 Q. (BY MR. CERSKI): All I simply want to know  
12:59:40 12 is who -- well, let me ask it this way: Was it  
12:59:44 13 Rotax's decision to establish a distribution network  
12:59:49 14 of distributors?  
12:59:52 15 A. Yes.  
13:00:03 16 Q. And Rotax does not have to grant anyone an  
13:00:12 17 authorized distributorship?  
13:00:18 18 MR. KELLY: ()uestion?  
13:00:19 19 Q. (BY MR. CERSKI): Is that correct?  
13:00:22 20 A. That's correct.  
1-3-00:26 21 Q. Are Rotax engines available for purchase in  
13:00:29 22 the United States?  
13:01:18 23 A. Yes.  
13:01:18 24 Q. Do you know where they're available for  
13:01:29 25 purchase?

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Josef Fuerlinger - December 3, 2004  
Examination by Mr. Cerski

13:01:32 1 THE INTERPRETER where?"  
 13:01:34 2 (Interpreter interprets, and  
 witness  
 13:02:10 3 confers with interpreter)  
 13:02:12 4 THE INTERPRETER has two  
 13:02:14 S meanings. What is the meaning of it?  
 13:02:17 6 THE NEUTRALNESS where is the  
 13:02:20 7 location, geographical location?  
 13:02:22 8 MR. KELLYI understand what the  
 13:02:22 9 problem is.  
 13:02:23 10 MR. CERSKY: And I think I may,  
 13:02:25 11 too.  
 13:02:26 12 MR. KELLYI really not a question  
 13:02:28 13 of can you walk into Cleveland and get one.  
 13:02:32 14 Anyhow -  
 13:02:33 15 MR. CERSKI: Right.  
 13:02:37 16 Q- (BY MR. CERSKI: Kodiak has dealers in the  
 13:02:39 17 United States; is that correct?  
 13:02:41 18 A. Kodiak has authorized service centers.  
 13:02:46 19 Q- Okay. And the term "authorized service  
 centers" that the same term and meaning as what's  
 referred to in the contract as a "dealer network?"  
 13:03:02 20 A. I would -- from my understanding authorized  
 service centers of Kodiak stands for a dealer.  
 13:03:16 21 Q. Okay.  
 13:03:16 22 A. That's my definition.

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Josef Fuerlinger - December 3, 2004  
Examination by Mr. Cerski

Q- Okay. And then the -- the service centers  
 13:03:25 2 that are in the United States, are they the locations  
 13:03:30 3 where Rotax engines are available for purchase in the  
 13:03:38 4 United States?  
 13:03:39 5 A. Might be. Yes.  
 13:03:48 6 Q. Okay.  
 13:03:49 7 MR. KELLYI think the problem is  
 13:03:50 8 location. Off the record.  
 Or keep it on the record.  
 13:03:54 9 Location as you walk into a store and buy one, it's  
 13:03:58 10 kind of beside the point of how one goes about  
 13:04:03 11 purchasing one of these. Location, store, you know.  
 13:04:07 12 MR. CERSKI: I see what you're saying.  
 13:04:11 13 As opposed to calling them up or e-mailing or  
 13:04:13 14 whatever.  
 13:04:14 15 MR. KELLY: Right.  
 13:04:16 16 Q. (BY MR. CERSKI): Are the service centers  
 13:04:19 17 the mechanism by where someone in the United States  
 13:04:24 18 would purchase a Rotax engine?

13:04:30 19 A. Could be one area where an end user may or  
13:05:15 20 may not purchase an engine.  
13:05:19 21 Q- Are there other areas where they could  
13:05:23 22 purchase aircraft engines?  
13:05:25 23 A. Might be. It could be purchase engines  
13:05:43 24 outside of the U.S.  
13:05:45 25 Q. But inside the U.S.?

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Josef Fuerlinger - December 3, 2004  
Examination by Mr. Cerski

13:13: 05:53 13:05:53 13 : 05:57 13 :05 :59 13: 05:53 13:05:53 13 : 05:57 13 :05 :59 13 OG: 00 13 06 : 03 13 06:07 13 06: 10 13 06 10 13 061  
06:2 0 1306:2 0 13 06: 2 5 13 06 31 13 06 33 13 06 3 8 1306:2 0 13 06: 2 5 13 06 31 13 06 33 13 06 3 8 13 06 :45 13 06: 4 8 13 0 6: 55 3.3.0  
0 7 16

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4 S 6 7 8 9 10 11 12

13 14 15 16 17 18 19 20 21 22 23 24 2S

A.

Q-

I don't know.

Could the -- could a United States citizen call up Rotax and purchase an engine?

A. No.

Q- They have to go through the distributor; is that correct?

Rotax sells only engines to the authorized distributor.

Q. So if you want to purchase a new engine from Rotax, you have to go through one of the authorized distributors, right?

Correct.

Q. So if the authorized distributors set up a dealer network in the United States, then you would need to go to the dealers to get the engine from Kodiak to get it from Rotax; is that correct?

A. Rotax has no control over how authorized distributors set up his distribution network within his given territory.

Q. Other than what's specifically articulated in the contract?

A.

Q.

As defined in the contract.

Okay. Other than aircraft engines, are Rotax engines incorporated into products that are sold in the United States?

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Josef Fuerlinger - December 3, 2004  
Examination by Mr. Cerski

13:07:22 1 A. Rotax does not sell any products into the  
13:07:37 2 United States.  
13:07:38 3 Q- No, I understand that.  
13:07:39 4 Are Rotax engines incorporated into  
13:-07-42 5 products that are sold in the United States?  
13:08:11 6 THE INTERPRETER: Do you want me to  
13:08:12 7 translate the question?  
13:08:14 8 THE WITNESS; No, no. I -  
13:08:18 9 THE INTERPRETER: You're thinking?  
13:08:20 10 THE WITNESS: I'm searching for the  
13:08:21 11 right answer.  
13:08:46 12 Yes, it's possible there is a vroduct  
13:08:53 13 containing a Rotax engine might be in the U.S.  
13:08:56 14 Q- (BY MR. CERSKI): Is it more than just  
13:08:57 15 possible? I mean, does Rotax have knowledge that  
13:09:01 16 these engines are being put into products that are  
13:09:04 17 sold in the United States?  
13:09:06 18 A. As I said before, Rotax is not involved in  
13:09:34 19 the marketing -- market of products.  
13:09:46 20 Q. So are you saying once you leave the  
13:09:49 21 factory you don't know where they go?  
13:09:S2 22 A. We have no control over where these  
13:09:55 23 products may going to end up.  
13:09:59 24 Q. Does Rotax have interest as to whether or  
13:10:03 25 not they're being sold in the United states?

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Josef Fuerlinger- December 3, 2004  
Examination by Mr. Cerski

THE INTERPRETER: Sorry to interrupt,  
13:10:39 2 but interest, do you mean very -  
13:10:42 3 MR. CERSKI: Concern.  
13:10:43 4 THE INTERPRETER: -- very needs? So  
13:10:46 5 not only financial interest but interest?  
13:10:48 6 MR. CERSKI: Right.  
13:10:52 7 (Interpreter interprets, and  
13:10:53 8 interpreter and witness confer)  
13:11:03 9 THE WITNESS: The distribution of the  
13:11:05 10 products is the responsibility of our authorized  
13:11:14 11 distribuLors or -  
13:11:18 12 Q. (BY MR. CERSKI): Well, I'm not just talking  
13:11:20 13 about aircraft engines.

13:11:45 14 A. we have a general interest in --

13:11:46 15 undersLanding where it says product -- our product is  
13:11:59 16 going to be used in --- in -- in which application.  
13:12:17 17 If you don't mind, I would like to make a break.  
13:12:21 18 MR. CERSKI: Sure.  
13:12:21 19 (Recess taken)

13:12:21 20 Q- (BY MR. CERSKI) going to try and  
13:34:45 21 shortcut some of these things if I can-  
13:34:48 22 Would you agree that the financial

13:34:50 23 success of Rotax depends upon the success of the  
13:34:57 24 products that Bombardier Recreational division sells?  
13:35:23 25 (Witness confers with interpreter, and

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Josef Fuerlinger - December 3, 2004  
Examination by Mr. Cerski

1-3:35:23 1 interpreter interprets)  
13:35:47 2 THE WITNESS: Yes.  
13:35:47 3 Q. (BY MR. CERSKI): With regard to Bombardier  
13:36:22 4 Recreational Products Divisions products -- the ATVs,  
13:36:25 5 Ski-Doos, the water craft -- does Rotax recognize the  
13:36:32 6 United States as a major market for those products?  
13:36:45 7 A. As I said before, we don't -- we are not  
13:36:53 8 involved in the distribution of such product as  
13:36:56 9 mentioned in the question, but we see it as a  
13:37:07 10 potential market.  
13:37:08 11 Q. Does Rotech develop specific engines for  
13:37:13 12 use in the United States?  
13:37:15 13 A. No.  
13:37:19 14 Q. Does Rotax develop engines to comply with  
13:37:25 15 United States environmental laws?  
13:37:40 16 A. We develop engines or make engines based on  
13:37:45 17 the customer's request, and if this includes the  
13:37:51 18 specification of the environmental laws, what you  
13:37:56 19 ask, we would fulfill the specification.  
13:37:59 20 Q. And has Bombardier requested you to make  
13:38:01 21 engines compliant with U.S. environmental laws?  
13:38:08 22 MR. KELLY: Object to the form. You  
13:38:10 23 can answer.  
13:38:14 24 Q. (BY MR. CERSKI): Bombardier as a customer.  
13:38:33 25 A. To the fact that I'm not involved in the

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Josef Fuerlinger - December 3, 2004  
Examination by Mr. Cerski

13:38:40 1 in the business with the customer, Bombardier, Inc.,  
 13:38:48 2 I don't know.  
 13:40:11 3 MR. CERSKI: I'm trying to think of a  
 13:40:12 4 shortcut to go through some of these things rather  
 13:40:19 5 than go through them. I apologize. So just bear  
 13:40:25 6 with me.  
 13:40:28 7 MR. KELLY: Shortcuts are good.  
 13:41:17 8 (Discussion off the record)  
 1.3:41:58 9 Q. (BY MR. CERSKI): Do you believe the demand  
 13:42:00 10 for Rotax engines by your customers would be at the  
 13:42:05 11 level it is today without the United States as a  
 13:42:09 12 market?  
 13:42:11 13 MR. KELLY: Object to the form.  
 13:42:31 14 THE WITNESS: This is a very  
 13:42:32 15 hypothetical and speculative question. I can't  
 13:42:40 16 answer this question.  
 13:42:41 17 Q. (BY MR. CERSKI): Do you know -- I can't  
 13:42:48 18 find an answer myself.  
 13:42:50 19 But Rotax does know where the majority  
 13:42:52 20 of Bombardier's products end up that contain Rotax  
 13:43:00 21 engines, do they not?  
 13:43:12 22 A. As I said before, for the -- our customers  
 13:43:31 23 such as Bombardier, Inc., are -- they are the ones  
 13:43:35 24 responsible for the product which going to be  
 13:43:42 25 distributed through its distribution network. We

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Josef Fuerlinger - December 3, 2004  
 Examination by Mr. Cerski

13:43:47 1 don't have any information -- or at least we don't  
 13:43:53 2 have any information where it's specific defining us  
 13:43:59 3 exactly where the product goes.  
 13:44:08 4 Q. Okay. And when you say **you don't have any**  
 13:44:17 5 specific information, are you referring to all of  
 13:44:19 6 your customers, or are you just referring to  
 13:44:22 7 Bombardier, Inc.?  
 13:44:23 8 A. All our customers.  
 13:44:24 9 Q. And does that include Bombardier?  
 13:44:26 10 A. Yes.  
 13:44:36 11 Q. Would it surprise you that the Bombardier  
 13:44:43 12 members of the supervisory board informed Rotax -  
 13:44:49 13 and I can show you these documents, but I'll ask this  
 13:44:54 14 question first.  
 13:44:55 15 Would it surprise you that the  
 13:44:58 16 Bombardier members of the supervisory board informed  
 13:45:00 17 Rotax, for example, that the Sea-Doo market is  
 13:45:10 18 75 percent in the United States?  
 13:45:13 19 MR. KELLY: Object to the form.  
 13:45:29 20 THE WITNESS: Well, I -- I didn't see  
 13:45:30 21 the documents, so I can only take this information  
 13:45:40 22 from you. It's a question what is the definition of  
 13:45:43 23 the market and which area are you in, and that's the  
 13:45:47 24 percentage which goes with this market. What is the  
 13:45:52 25 relevant market is what -- what is the discussion

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Josef Fuerlinger - December 3, 2004  
Examination by Mr. Cerski

13:45:54 1 about.  
13:45:59 2 Q. (BY MR. CERSKI): Okay. Let me -  
1.3:46:13 3 (Interpreter and witness confer)  
13:46:29 4 Q. (BY MR. CERSKI): All right. I'm going to  
13:46:31 5 get off of this for right now. I will go back  
13:46:35 6 through it if we have time. And I want to go through  
13:46:41 7 those documents with you, but I don't think that's  
13:46:44 8 really necessary, so let's move on.  
17:57:23 9 (Discussion off the record)  
13:47:02 10 Q. (BY MR. CERSKI): Fuerlinger 22, which is a  
13:47:04 11 type certificate data sheet from the FAA with regard  
1.3:47:08 12 to the 9/14 engine. That's a type certificate data  
13:47:26 13 sheet from the United States Federal Aviation  
13:47:29 14 Administration that I will represent to you I printed  
13:47:33 15 off of their website, and if you'll notice it says  
13:47:39 16 that the type certificate holder is Rotax for the  
13:47:42 17 9/14 engine.  
13:47:46 18 My question for you is: Why does  
13:47:51 19 Rotax get -- why did Rotax get this engine certified  
13:47:56 20 in the United States?  
13:48:05 22 (Witness reads document)  
13:48:18 22 THE WITNESS: At the time when we  
13:48:20 23 applied for the type certification of the Austrian  
13:48:27 24 type certificate by the Austrian National authority,  
13:48:35 25 we asked also for a validation of the type --

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Josef Fuerlinger - December 3, 2004  
Examination by Mr. Cerski

13:48:39 1 Austrian type certificate in other countries, such as  
13:48:48 2 the FAA.  
13:48:49 3 Q. (BY MR. CERSKI): With the intention of  
13:48:51 4 being able to have the engines used in, for example,  
13:48:56 5 the United States?  
13:49:03 6 A. The intention was to have this engine type  
13:49:10 7 certificated. It means not necessarily that the  
13:49:12 8 engine would be used in the United States.  
13:49:16 9 Q. But it cannot be used in the United States  
13:49:20 10 as a certified engine without it being certified; is  
13:49:23 11 that correct?  
13:49:32 12 A. That's a question of which standard the  
13:49:38 13 aircraft manufacturers with a product is for sale.  
13:49:41 14 Q. So if it's not for an experimental  
13:49:45 15 aircraft, you would need a certificated engine; is  
13:49:50 16 that right?  
1,3:49:53 17 MR. KELLY: Object to the form.  
13:49:56 18 Q. (BY MR. CERSKI): Well, let me ask it this  
13:49:59 19 way: What products use a 9/14 certified engine?  
13:50:23 20 A. I don't recall.  
13:50:23 21 Q. Okay.

13:50:43 22 MR. KELLY: You mean type of

13:50:44 23 product or --  
 13:50:46 24 MR. CERSKI: Yeah.  
 13:50:47 25 MR. KELLY: the name of a

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Josef Fuerlinger - December 3, 2004  
 Examination by Mr. Cerski

13:50:49 1 particular?  
 13:50:49 2 MR. CERSKI: Well, I mean, I can think  
 13:50:51 3 of one Just off the top of my head. Is it Diamond  
 13:50:56 4 Aviation or something to that effect?  
 13:50:59 5 MR. KELLY: I don't know if he might  
  
 13:51:01 6 be able to answer your question in terms of types of  
 13:51:02 7 products. I don't know.  
 13:51:04 8 Q- (BY MR. CERSKI): Well, let's put it this  
 13:51:06 9 way: If someone is required to have a type  
  
 13:51:08 10 certificated engine in an aerial aircraft, the only  
  
 13:51:12 11 way they can use the 9/14 is if Rotax obtained a type  
 13:51:16 12 certificate.  
 13:51:18 13 MR. KELLY: Question?  
  
 13:51:20 14 Q. (BY MR. CERSKI) correct?  
  
 13:51:22 15 A. Again, it depends which standard the  
  
 13:51:26 16 aircraft manufacturer wants to use for his products.  
 13:51:29 17 There's different standards out where he may use an  
 13:51:38 18 engine in a certified aircraft where not is required  
 13:51:44 19 to have a certified engine. That's up to the  
 13:51:51 20 aircraft manufacturer to choose which standards he  
 13:51:54 21 wants to comply. Based on that he has to choose  
 13:51:57 22 which engines's certification level is required.  
 13:52:09 23 Q. Let's break it down this way: There's an  
 13:52:15 24 ultralight market and a certified market for aircraft  
 13:52:18 25 engines; is that right?

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Josef Fuerlinger - December 3, 2004  
 Examination by Mr. Cerski

13:52:20 1 A. There's an ultralight market. That means  
 13:52:32 2 an experimental market.  
 13:52:32 3 Q. So experimental and certified, they're the  
 13:52:36 4 two types of markets for these **aircraft engines**?  
 13:52:39 5 A. Just basically in general terms the two  
 13:52:42 6 definition of the two markets.  
  
 13:52:44 7 Q. Okay. And if Rotax wants to serve the  
  
 13:52:49 8 certified market in the United States, do they have

13:52:53 9 to obtain a type certificate from the FAA?  
 13:53:00 10 MR. KELLY: Object to the form.  
 13:53:03 11 THE WITNESS: As I said before, if  
 13:53:11 12 someone -- an aircraft manufacturer would make an  
 13:-S3:14 13 aircraft, he has to choose which standard. Now,  
 13:53:21 14 based on this, he has to choose the right combination  
 13:53:24 15 of the components such of an engine.  
 13:53:29 16 Q. (BY MR. CERSKID: I'm not talking about  
 13:53:31 17 an aircraft manufacturer at this point. I'm just  
 13:53:33 18 talking in a broad sense that an aircraft  
 13:53:36 19 manufacturer that decides they want to put a  
 13:53:39 20 certified engine in their aircraft; that as a market  
 13:53:41 21 or the customer who wants to buy a certified engine.  
 13:53:45 22 If you're trying to sell engines under  
 13:53:48 23 the term "certified," they would have to have a type  
 13:53:52 24 certificate; is that correct?  
 13:S3:56 25 MR. KELLY: Object to form.

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Josef Fuerlinger - December 3, 2004  
 Examination by Mr. Cerski

13:53:59 1 Q. (BY MR. CERSKV: In the United States.  
 13:54:00 2 MR. KELLY: Does that mean that in  
 13:54:01 3 order to sell a certified engine, the engine has to  
 13:54:04 4 be certified? Is this -- tbac's really what the  
 13:54:08 5 question sounds like to me.  
 13:54:10 6 MR. CERSKII: Well, what I'm trying to  
 13:54:11 7 establish is is that -- I'm trying to establish the  
 13:54:11 8 reason why they got the engine type certificated,  
 13:54:16 9 which was, I believe, to serve the certified market;  
 13:54:19 10 but I'm not getting that -- I'm not getting that from  
 13:54:23 11 the witness, at least not from what I understand.  
 1-3:S4:26 12 MR. KELLY: what: I'm getting is that  
 13:S4:28 13 he -- if they developed an engine that was certified  
 13:54:31 14 it was to serve the needs of their customer who wants  
 13:54:34 15 to put a certified engine in an aircraft.  
 13:54:37 16 MR. CERSKII: That's not what I've  
 13:54:38 17 heard him say, but -  
 13:54:41 18 MR. KELLY: Maybe not. I don't know.  
 13:54:43 19 But it seems to me he's giving about the same -  
 13:54:47 20 MR. CERSKII: well, let me just get -  
 13:54:47 21 MR. KELLY: -- pretty much the same  
 13:54:48 22 answer three times now.  
 13:54:49 23 MR. CERSKII: But it has to do with an  
 13:54:52 24 aircraft manufacturer chooses to put one in or  
 13:54:54 25 doesn't choose to put one in. It doesn't --

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Josef Fuerlinger - December 3, 2004  
 Examination by Mr. Cerski

13:54:58 1 MR. KELLY: He's talking about meeting  
 13:55:00 2 his customer's needs.  
 13:55:04 3 THE INTERPRETER: That's what he said  
 13:55:07 4 at the beginning.  
 13:SS:09 5 (Interpreter and witness confer in  
 13:55:10 6 German)  
 13:55:12 7 THE WITNESS: Yeah.  
 13:55:13 8 THE INTERPRETER: At the beginning he  
 1,3:55:14 9 said that they produce -  
 13:55:18 10 MR. CERSKI: Well, you know what, you  
 13:55:19 11 read it to me.  
 13:SS:21 12 MR. KELLY: It's back a ways now.  
  
 13:55:28 13 (Interpreter and witness confer in  
 13:55:26 14 German)  
 13:55:27 15 (Discussion off the record, and the  
 13:SS:27 16 record was read as requested)  
 13:56:39 17 MR. CERSKI: Is it before that? I  
 13:56:40 18 don't think -  
 13:56:40 19 MR. KELLY: I think it's the same  
  
 13:56:40 20 thing. Like I said, I think he said the same thing  
 13:56:42 21 about three or four times now. That's what he means.  
 13:56:46 22 MR. CERSKI: That's your  
 13:56:48 23 interpretation.  
 13:57:04 24 Q. (BY MR. CERSKI): Let me try to ask it this  
 13:57:07 25 way: When Rotax has an engine certified by the

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Josef Fuerlinger - December 3, 2004  
 Examination by Mr. Cerski

13:57:12 1 FAA -  
 13:57:29 2 MR. KELLY: Chris, off the record for  
 13:57:31 3 a minute?  
 13:57:32 4 MR. CERSKI: Yeah.  
 13:57:33 5 (Discussion off the record)  
  
 13:57:48 6 Q. (BY MR. CERSKI) certificate,  
 13:57:49 7 sir, is for a 9/14 engine and it says **that the** type  
 13:57:53 8 certificate holder is Bombardier-Rotax. Does that  
 13:57:59 9 mean that the 9/14 is certified by the FAA?  
 13:58:09 10 A. That means the original Austrian type  
 13:58:15 11 certificate of this engine has been validated by the  
 13:58:21 12 FAA.  
 13:58:23 13 Q. Did you perform endurance tests pursuant to  
 13:58:28 14 FAR -- FAA standards or regulations to obtain this  
 13:58:34 15 type certificate?  
  
 13:58:49 16 A. Yes.  
 13:58:50 17 MR. KELLY: Object to the form. Go  
 13:58:51 18 ahead.  
 13:58:54 19 THE WITNESS: Yes.  
  
 13:58:54 20 Q. (BY MR. CERSKI) greater than  
  
 13:58:56 21 the typical endurance tests that are required by the  
 13:59:02 22 Austrian authorities?  
 13:59:05 23 A. No.  
 13:59:05 24 Q. Is there a certain hour requirement for an  
 13:59:08 25 endurance test by the Austrian authorities?

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Josef Fuerlinger - December 3, 2004  
Examination by Mr. Carski

13:59:12 1 A. Yes.  
13:59:12 2 Q. And what is that requirement?  
13:59:18 3 A. Just depends on the standard of the engine,  
13:59:21 4 what the applicant is asking for.  
13:59:24 5 Q- Okay. What about for this engine?  
13:59:29 6 A. There is 150 hours endurance test. And  
13:59:35 7 certain other components test is required.  
13:59:37 8 Q. And do you know what the endurance test is  
13:59:41 9 pursuant to the federal aviation regulations for the  
13:59:43 10 FAA?  
13:59:44 11 A. Same.  
13:59:48 12 Q. Okay. Have you visited the FAA in  
13:59:53 13 Massachusetts? Not necessarily with regard to this  
14:00:01 14 engine, but --  
14:00:02 15 A. In this given time frame, I don't recall.  
14:00:06 16 Given time frame, I mean --  
14:00:08 17 Q. 1998 to 2000?  
14:00:10 18 A. Yeah.  
14:00:11, 19 Q. Two. Who is Rotax's FAA representative?  
14-00.19 20 MR. KEI Objec to the form.  
14:00:23 21 Q. (BY MR. CERSKI) :Does Rotax have an FAA  
14:00:26 22 reiDresentative?  
14:00:27 23 A. No.  
14:00:27 24 Q- Are you familiar with the name John Fisher?  
14:00:35 25 A. I heard the name.  
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Josef Fuerlinger - December 3, 2004  
Examination by Mr. Cerski

14:00:36 1 Q- Do you know who he is?  
14:00:38 2 A. If I recall it right, it was much prior to  
14:01:10 3 this time frame, what we're talking. It was with the  
14:01:29 4 FAA, but I don't know which title or ranking it was.  
14:01:34 5 Q. Has the FAA ever asked you for information  
14:01:37 6 to publish any airworthiness directive?  
14:01:46 7 THE INTERPRETER: Publish what?  
14:01:50 8 Q. (BY MR. CERSKI) : Airworthiness directive.  
14:01:53 9 A. To the fact that the original of the type  
14:01:55 10 certificate of the Austrian -- is issued in Austria  
14:02:00 11 with the Austrian authorities is the one who is the  
14:02:05 12 responsible authority for the products which are  
14:02:08 13 certified by Rotax. By my best knowledge I'm not  
14:02:24 14 aware that the FAA has issued a type certificate -  
14:02:36 15 sorry, I'm -- worthy?  
14:02:41 16 Q. Airworthiness directive.  
14:02:44 17 A. They may have done such based to the fact  
14:02:46 18 that the Austrian has prior to them issued one.  
14:02:49 19 Q. Okay. In your role as vice president of  
14:03:00 20 aircraft engines for Rotax, have you ever had either  
14:03:04 21 verbal or written correspondence with the FAA?  
14:03:21 22 A. I don't recall. We had some -- we had some  
14:03:50 23 information such as a service manual and a manual -  
14:04:00 24 operator's manual.  
14:04:02 25 Q. I may --

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 Examination by Mr. Cerski

14:04:05 1 A. it may also go to different authorities  
 14:04:08 2 worldwide including the FAA.  
 14:04:10 3 Q. And is that this list here?  
 14:04:12 4 MR. CERSKI: mark that as  
 14:04:13 5 Fuerlinger -- 23?  
 14:04:21 6 MR. KELLY: can't ask her.  
 14:04:24 7 THE INTERPRETER: Yes, 23.  
 14:04:26 8 MR. CERSKI: bring you to more  
 14:04:27 9 of my depositions.  
 14:04:30 10 (Discussion off the record)  
 14:04:35 11 Q. (BY MR. CERSKI) this list, the -- so  
 14:04:48 12 the service manual and certain other service  
 14:04:50 13 publications I got in Rotax's production, a stack of  
 14:04:S7 14 documents that were service-related documents that  
 14:04:59 15 went to the distributors, would they also be sent via  
 14:05:03 16 this list to the FAA?  
 14:05:05 17 They were addressed to the  
 14:05:07 18 distribution partners I believe at the time, but I'm  
 14:05:12 19 just curious if the service letter that was attached  
 14:05:15 20 to those went -- would go as well?  
 14:05:21 21 A. No. That's two different lists.  
 14:05:23 22 Q. Okay. Does Rotax send -- well, actually,  
 14:05:32 23 strike that.  
 14:05:33 24 What type of -- what's the name of  
 14:05:35 25 Rotax's service information documents? In the  
 United

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 Examination by Mr. Cerski

14:05:43 1 States -- let me give you - MR. KELLY: An example.  
 14:05:45 2 Q. (BY MR. CERSKI): -- an example.  
 14:05:47 3 In the United States manufacturers  
 14:05:48 4 will send out service letters or -- not airworthiness  
 14:05:55 5 directives -- service bulletins and then the FAA puts  
 14:05:59 6 out airworthiness directives.  
 14:06:02 7 What does Rotax call the information  
 14:06:04 8 that they put out with regard to technical aspects of  
 14:06:07 9 their engines?  
 14:06:08 10 MR. KELLY: Show him one. Right here.  
 14:06:10 11 MR. CERSKI: Oh.  
 14:06:15 12 (Interpreter and witness confer in  
 14:06:27 13 German)  
 14:06:25 14 THE INTERPRETER: He can answer the  
 14:06:27 15 question, he said.  
 14:06:27 16 Q. (BY MR. CERSKI): Oh, you can? Go ahead.  
 14:06:30 17 A. There has been some name changes, how the  
 14:06:33 18 definition of such a document should be named --  
 14:06:36 19 Q. Okay.  
 14:06:38 20 A. -- based on the certain authority change in

14:06:42 22 Europe.  
 14:06:42 23 Q. Okay. And -  
 14:06:46 24 A. But in similar it would be in principle the  
  
 14:06:51 25 same name as you mentioned before.

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 Josef Fuerlinger - December 3, 2004  
 Examination by Mr. Cerski

14:06:53 1 Q. Okay. So service bulletins or service  
 14:06:56 2 letters?  
 14:06:56 3 A. Service informations or service  
 14:06:59 4 instructions and technical bulletins.  
 14:07:08 5 Q. And does the FAA receive these documents  
 14:07:16 6 every time that Rotax issues one with regard to a  
 14:07:19 7 certified engine?  
**14:07:45** 8 A. **If it's concerning** a certified engine,  
 14:07:52 9 every authority which is listed would get the  
 14:07:56 10 information at the same time.  
 14:07:57 11 Q. Okay. Are you familiar with the United  
 14:08:06 12 States organization called the National  
 14:08:09 13 Transportation Safety Board, otherwise NTSB?  
 14:08:13 14 A. Yes.  
 14:08:13 15 Q. Has Rotax ever been invited by the NTSB to  
 14:08:18 16 an accident investigation?  
 14:08:20 17 A. No.  
 14:08:30 18 Q. Has Rotax participated in an investigation  
 14:08:32 19 of accidents?  
 14:08:33 20 A. Invest -- accident investigation  
 14:08:57 21 normally -- well, not normally -- are carried out  
 14:09:02 22 by -- by the authorities.  
 14:09:03 23 Q. Okay.  
 14:09:04 24 A. And in this case the authorities decided to  
 14:09:10 25 invite the relevant people which then they need to

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 Josef Fuerlinger - December 3, 2004  
 Examination by Mr. Cerski

14:09:16 1 have.  
 14:09:17 2 Q. And in the Kozial v. Bombardier  
 14:09:30 3 investigation, did Rotax get invited to that  
 14:09:35 4 investigation by the NTSB?  
 14:09:37 5 A. No.  
 14:09:37 6 Q. Mr. Tucker from Kodiak participated in that  
 14:09:41 7 investigation and -- and as Rotax; does that -  
 14:09:49 8 THE INTERPRETER: AS?  
 14:09:50 9 MR. CERSKI: As Rotax.  
 14:09:51 10 THE INTERPRETER: Mr. Tucker from  
 14:09:53 11 Kodiak participates as?  
 14:09:55 12 MR. CERSKI: In that investigation.  
 14:09:56 13 THE INTERPRETER: Uh-huh.  
 14:09:58 14 Q. (BY MR. CERSKI): Do you know how he got  
  
 14:10:00 15 invited to that investigation?  
  
 14:10:12 16 A. No.  
 14:10:35 17 Q. Do you have -- does Rotax know how many  
 14:10:38 18 engines from Kodiak, sold by Kodiak, end up in the  
 14:10:42 19 United States?

14:10:42 20 A~ No.  
 14:10:45 21 Does Rotax track the sales of Kodiak and  
 14:10:51 22 Rotax -- in Rotech, I should say?  
 14:10:56 23 MR. KELLY: ObjeCL to the form as to  
 14:10:58 24 what you mean by "track."  
 14:10:S9 25 MR. CERSKI: Do they monitor.

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 Examination by Mr. Cerski

14:11:02 1 THE WITNESS know by the end of  
 14:11:17 2 the year they turn over -- how many volumes a  
 14:11:29 3 distributor has -- authorized distributor of Rotax  
 14:11:32 4 engines has been purchased.  
 14:11:34 5 Q. (BY MR. CERSKI): And the distribution  
 14:11:35 6 agreement for both Rotech and Kodiak provide that  
 14:11:40 7 every year Rotax and the distributor will come up  
 14:11:44 8 with a minimum amount of engines that the distributor  
 14:11:47 9 has to sell. That's correct, right? You can look at  
 14:11:52 10 the documents.  
 14:11:53 11 A. Yeah, that's correct. There is a -  
 14:11:56 12 Q. Minimum sales requirement?  
 14:11:58 13 A. -- minimum sales requirement.  
 14:12:01 14 Q. And how do you determine the minimum sales  
 14:12:07 15 from year to year?  
 14:12:40 16 A. There is defined in the language here of  
 14:12:44 17 the - Of the Kodiak contract?  
 14:12:44 18 Q- Kodiak Research, Limited, Nassau contracL'.  
 14:12:47 19 A.  
 14:12:55 20 Q- And what are --- and what is the minimum  
 14:12:58 21 number? Because I couldn't read it.  
 14:13:24 22 A. There has been none established in this  
 14:13:27 23 contract because exactly when we did it, the finances  
 14:13:37 24 were -- were very heavily changed due to the  
 14:13:41 25 September 11 impact, so the economics has been

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Josef Fuerlinger - December 3, 2004  
 Examination by Mr. Cerski

14:13:46 1 totally changed.  
 14:13:47 2 Q. Okay. But this -- this contract was  
 14:13:49 3 entered into in 1998, wasn't it?  
 14:13:S7 4 A. 2001.  
 14:13:57 5 Q. Was it 2001?  
 14:14:00 6 A. (Nods.)  
 14:14:01 7 Q. Okay. Well, since then have -- has Rotax  
 14:14:07 8 established minimum sales for both Kodiak and Rotech?  
 14:14:11 9 A. No.

14:14:14 10 Q. And the reason for that is because of  
 14:14:16 11 September 11th?  
 14:14:17 12 A. And the economical drastic change.  
 14:14:21 13 Q. As a result of September 11th?  
 14:14:24 14 A. Correct.

14:14:32 15 Q. So, is it fair to say that Rotax recognizes  
 14:14:44 16 that after September 11th, the United States economy  
 14:14:47 17 has gone on a downward -- has gone downward?  
 14:14:59 18 A. That's what I don't say (sic,) I think the  
 14:15:02 19 whole economic after September 11th has been changed.  
 14:15:06 20 The worldwide economic has been changed.

14:15:09 21 Q. Okay. Now, do you analyze -- does Rotax  
 14:15:16 22 analyze the sales of its distributors? Meaning -  
 14:15:23 23 let me explain it a little bit first.

14:15:25 24 Do you maybe once a year take a look  
 14:15:27 25 at their markets, see how much they're selling,

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Josef Fuerlinger - December 3, 2004  
 Examination by Mr. Cerski

14:15:30 1 engines they're selling, to which countries, to see  
 14:15:33 2 if the market could be expanded to ensure that  
 14:15:38 3 they're -- they're making the most of their  
 14:15:41 4 territory? Does Rotax do anything like that?

14:15:45 5 A. No.  
 14:15:48 6 Q. So how does Rotax know that, for example,  
 14:15:54 7 Kodiak is selling to its potential?  
 14:15:59 8 MR. KELLY: Object to the form.  
 14:16:04 9 THE WITNESS: We have a long-term

14:16:05 10 relationship with Kodiak, Nassau, Bahamas, and we're  
 14:16:13 11 confident that they're -- they're doing the best and  
 14:16:22 12 so we -- we trust in Kodiak.  
 14:16:32 13 0. (BY MR. CERSKI): The part of the contract  
 14:16:33 14 that states that you can evaluate whether or not  
 14:16:37 15 they're doing proper business and appoint other  
 14:16:41 16 dealers if you find necessary, how would you go about  
 14:16:45 17 doing that if you don't evaluate their performance?  
 14:16:52 18 A. This contract has been established by  
 14:16:57 19 lawyers and is used as a standard contract and has  
 14:17:01 20 maybe some provision in it which would allow us that  
 14:17:05 21 has never been used.

14:17:07 22 Q. okay. Let me give you an example, if I  
 14:17:10 23 could. Kodiak, in addition to the United States, has  
 14:17:15 24 Central America and South America, including Brazil,  
 14:17:30 25 Chili, Argentina and so on.

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14:17:39 1 If the Brazil market started growing  
 14:17:42 2 and Kodiak started receiving a lot of sales from  
  
 14:17:46 3 Brazil but at the same time Kodiak just decided to  
 14:17:S4 4 forego the United States market, would that be  
  
 14:17:57 5 acceptable to Rotax?  
 14:17:59 6 MR. KELLY: Object to the form.  
 14:18:08 7 (Interpreter and witness confer)  
 14:18:15 8 MR. KELLY: Yeah, convoluted question.  
 14:18:19 9 THE INTERPRETER: No, no. He said  
 14:18:21 10 it's many questions in one, so could you -  
 14:18:22 11 (Interpreter interorets)  
 14:18:3S 12 MR. KELLY: It's also not a  
 14:18:37 13 factual-based question. T's a hypothetical. So I  
 14:18:42 14 object to that.  
  
 14:18:45 15 THE WITNESS: Due to the fact that  
 14:18:46 16 this is a very hypothetical question, I -- and as 1  
 14:18:52 17 said before, we trust in Kodiak. He does the best  
 14:18:56 18 efforts in his territory. We have confidence in  
 14:19:03 19 Kodiak, that he does the right things.  
 14:19:17 20 Q. (BY MR. CERSKI): would it be acceptable to  
 14:19:19 21 Rotax if one of its distributors were foregoing a  
 14:19:25 22 potential market?  
 14:19:28 23 MR. KELLY: object to the form.  
 14:19:42 24 THE WITNESS: We expect that our  
 14:19:44 25 authorized distributor does the best in his given

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Josef Fuerlinger - December 3, 2004  
 Examination by Mr. Cerski

14:19:49 1 authority -  
 14:19:50 2 THE INTERPRETER: Territory.  
 14:19:52 3 THE WITNESS: -- in his -  
 14:19:53 4 THE INTERPRETER: Territory.  
 14:19:55 5 THE WITNESS: -- territory.  
 14:19:59 6 Q. (BY MR. CERSKI): Okay. Let's talk about  
  
 14.20:2B 7 the distribution of the products. Let's briefly talk  
  
 14:20:35 8 about Bombardier if we can.  
 14:20:40 9 How does Bombardier purchase engines?  
  
 14:20:48 10 A. You mean Bombardier, Inc.?  
 14:20:50 11 Q. Yes.  
 14:20:58 12 A. Based on purchase orders.  
 14:20:59 13 Q. Okay. And so does Rotax ship the engines  
  
 14:21:07 14 to -- I'm assuming they go to Canada; is that  
 14:21:11 15 correct, the engines?  
 14:21:13 16 A. Rotax sells ex-works Gunskirchen, or maybe  
 14:21:22 17 it's a similar term, it's FOB.  
  
 14:21:24 18 Q. FOB Austria?

14:21:26 19 A. Gunskirchen or Austria.  
 14:21:30 20 Q- So -  
 14:21:32 21 A. The products.  
 14:21:33 22 Q. -- Bombardier makes the shipment

1/1:21:37 23 arrangements for the engines, or does Rotax make the  
 14:21:41 24 shipment arrangements?  
 14:21:42 25 A. Bombardier is responsible for the shipment.

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Josef Fuerlinger - December 3, 2004  
 Examination by Mr. Cerski

1.4:21:47 1 And I mean Bombardier, Inc.  
 14:21:49 2 Q- Uh-huh. And are the engines shipped to  
 14:22:01 3 Bombardier on credit?  
 14:22:14 4 (Interpreter interprets)  
 14:22:16 5 MR. KELLY: Just ask him what the  
 14:22:18 6 terms are.

14:22:20 7 Q. (BY MR. CERSKI) Yeah. And I'll just give  
 14:22:21 8 you my understanding of something and maybe it will  
 14:22:24 9 help you. My understanding is that Kodiak pays for  
 14:22:27 10 the engine before it gets shipped to Rotax.

14:22:30 11 So my question is Bombardier  
 14:22:32 12 pay for the engine before it gets shipped to  
 14:22:36 13 Bombardier, or do you have some kind of an agreement  
 14:22:38 14 with Bombardier that it's paid for 30 dates out, 45  
 14:22:42 15 days out, after the product is sold, or something  
 14:22:45 16 along those lines?  
 14:22:46 17 A. There would be certain payment conditions

14:22:49 18 on the invoice, and this would be relevant as a  
 14:22:54 19 reference. I don't know what exact the terms is.

14:23:01 20 Q. Do you know how Bombardier pays for its  
 14:23:08 21 engines.  
 14:23:14 22 (Interpreter interprets)  
 14:23:21 23 Q. (BY MR. CERSKI): Does it -- well, I'll ask  
 14:23:22 24 you more specific.  
 14:23:24 25 Does Bombardier transfer cash directly

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Josef Fuerlinger - December 3, 2004  
 Examination by Mr. Cerski

14:23:27 1 to Rotax, does it give it a credit for something  
 14:23:32 2 within the corporate office, is it a balance sheet  
 14:23:39 3 adjustment at the end of the year because of the -  
 14:23:41 4 because it's under the same umbrella?  
 14:23:49 5 A~ I don't -- I don't know exactly how the  
 14:23:51 6 transfer is done, but I expect that they pay us just  
 14:23:58 7 as other customers pay us.  
 14:24:00 8 Q. Are you familiar with an entity called  
 14:24:04 9 Bombardier Credit?  
 14:24:07 10 A. No.  
 14:24:10 11 Q- Do you know if -- strike that.  
 14:24:33 12 Do you know if Bombardier typically

14:24:34 13 pays Rotax in Canadian dollars, United States dollars  
14:24:39 14 or Euros?  
14:24:45 15 A. I can only answer generally. They don't  
14:25:14 16 pay us in the Euro. They do not pay us in the Euro,  
14:25:18 17 I guess. It's Canadian or U.S. dollars.  
14:25:35 18 Q- And after -- well, I'll get that later.  
14:25:38 19 Let's go with the aircraft engine distribution for  
14:25:41 20 now and we'll get through this quicker -- later.  
14:25:45 21 Like we just went through with the channel  
14:25:50 22 distribution, let's do that for the aircraft.  
14:25:53 23 So the engines are made here in  
11:25:56 24 Austria, right?  
14:25:59 25 A. Correct.

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Josef Fuerlinger - December 3, 2004  
Examination by Mr. Cerski

14.26:00 1 Q\_And then from -- from Austria --- well, then

14:26:05 2 the distributor places an order?

14:26:10 3 A. Prior the engines are made, the distributor  
14:26:15 4 places an order to Austria.  
14:2G:17 5 Q. okay. And how is that -- that order sent

14:26:20 6 to Rotax, via paper, via e-mail?  
14:26:27 7 A. It depends which time trame you're looking  
14:26:30 8 at.

14:26:30 9 Q. Okay. Did it differ between some -- did it  
14:26:34 10 differ in the time frame of 1998 to 2002?  
14:26:42 11 A. I think, yes.

14:26:43 12 Q. Okay. Is there a point that Bombardier -  
14:26:46 13 or that Rotax went from paper to e-mail or some other  
14:26:51 14 type of electronic ordering system?

14:26:54 15 A. That has to do with the evolution of the  
14:26:59 16 communication -  
14:26:59 1.7 Q Okay.

14:27:01 18 A. -- systems.  
14:27:03 19 Q. So at one point the distributor would send  
14:27:07 20 you a paper purchase order?

14:27:1.0 21 A. Paper, a fax.

14:27:11 22 Q. okay.

14:27:12 23 A. or e-mail.  
14:27:13 24 I'd appreciate it if you

14:27:13 24 Q. And now how is it done?  
14:27:15 25 A. By a mail

14.27.15 25 A. By e-mail.

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Josef Fuhringer - December 3, 2004  
Examination by Mr. Cerski

14:27:17 1 Q\_ By e-mail.  
14:27:18 2 A. Most likely.  
14:27:27 3 Q\_ And after Rotax gets that purchase order  
14:27:29 4 what happens? Well, I'm going to try to be more  
14:27:36 5 specific.  
14:27:38 6 After Rotax gets the purchase order,  
14:27:39 7 do you receive payment, or do you start producing the  
14:27:42 8 engine first?  
14:27:47 9 A. It depends on the situation and agreement,

14:27:55 10 what we have with each authorized distributor for  
 14:27:59 11 Rotax aircraft engines.  
 14:28:01 12 Q. Okay. What's the agreement with Kodiak?  
 14:28:07 13 A. I'd have to look up on the contract, but  
 14:28:12 14 the contract defining exactly what the situation is.  
 14:28:19 15 Q. And so the payment terms are in the Rotech  
 14:28:26 16 and the -- the Kodiak agreements?  
 14:28:58 17 Is the Rotech one similar to the  
 14:29:02 18 Kodiak one? I think it's exactly the same from my  
 14:29:05 19 review. And the problem I'm having is that although  
 14:29:09 20 it does define a term of payment, the way I read it  
 14:29:13 21 is it says the term of payment will be determined  
 14:29:16 22 after the time you have been sent the purchase order.  
 14:29:20 23 Like the last paragraph -- or the first paragraph,  
 14:29:23 24 last line, "Distributor will receive separate written  
 14:29:26 25 notification annually that its -financial payment has

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Josef Fuerlinger - December 3, 2004  
 Examination by Mr. Cerski

14:29:28 1 been accepted." So I guess it's on an annual basis.  
 14:29:35 seem to say 2 in It seems to me a specific  
 14:29:38 3 method that's dictated.  
 14:29:43 4 MR. KELLY: Question?  
 14:29:44 S Q. (BY MR. CERSKI) is is what  
 14:29:45 6 is -- and it goes back to the original question,  
 14:29:46 7 which is what is the method of payment by Kodiak and  
 14:29:58 8 Rotech?  
 14:30:08 9 A. I don't recall the exact definition of the  
 14:30:12 10 payment conditions, but it -- that's a fact which is  
 14:30:18 11 established on each invoice which is given to the  
 14:30:25 12 authorized distributor and in this case for Kodiak.  
 14:30:29 13 Q. Do you have a -- I mean, do you have  
 14:30:31 14 generally it's done one way or the other?  
 14:30:44 15 A. There would be some with a letter of  
 14:30:47 16 credit. There would be some which has payment  
 14:30:51 17 before. I guess would be some where we would say  
 14:30:59 18 at -- payment at the date of invoice.  
 14:31:01 19 Q. Okay. And when you refer to -- I think you  
 14:31:05 20 said letter of credit. Do you mean that you extend  
 14:31:08 21 them a line of credit in order to purchase the  
 14:31:11 22 engines?  
 14:31:13 23 A. No. He has to provide us a bank guarantee.  
 14:31:16 24 That means a letter of credit.  
 14:31:18 25 Q. Okay- And is that bank guarantee through

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Josef Fuerlinger - December 3, 2004  
 Examination by Mr. Cerski

14:31:21 1. any Bombardier entity?  
 14:31:23 2. A. No.  
 14:31:31 3. Q. Now, I think, as we discussed earlier,  
 14:31:34 4. through these contracts Rotax. assigns a territory to  
 14:31:40 S a distributor; is that correct?  
 14:31:44 6. A. Correct.  
 14:31:44 7. Q. And can the distributor sell outside that  
 14:31:47 8. territory?  
 14:32:10 9. (Interpreter interprets)

14:32:17 10 THE WITNESS: I have to look up on the  
 14:32:18 11 contract, but my -- by my recollections, we don't  
 14:32:25 12 restrict the authorized distributor. We have to  
 14:32:32 13 respect the law of Austria and Europe.  
 14:32:39 14 Q- (BY MR. CERSKI: Say that again. TIm  
 14:32:40 15 sorry. It's just the law part.  
 14:32:43 16 MR. KELLY: We have to respect the law  
 14:32:45 17 of Austria or Europe.  
 14:32:47 18 MR. CERSKI: Okay.  
 14:32:49 19 THE INTERPRETER: You said and Europe.  
 14:32:51 20 MR. KELLY: And Europe.  
 14:32:53 21 THE INTERPRETER: Sorry.  
 14:32:54 22 MR. KELLY: I got most of it~

14:32:56 23 Q- (BY MR. CERSKI says here -- it

14:33:02 24 defines the territory where Kodiak could sell, does  
 14:33:07 25 that mean that Kodiak can sell in Europe if they

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Josef Fuerlinger - December 3, 2004  
 Examination by Mr. Cerski

14:33:1.0 1 wanted to?  
 14:33:20 2 A. Well, as I said, by the -- we can only -  
 14:33:26 3 we assign a distribution area where he has to have  
 14:33:30 4 his focus on it and do the best efforts.  
 14:33:35 5 Q~ And according to this contract he -- he's  
 14:33:43 6 guaranteed exclusivity of that territory unless he's  
 14:33:49 7 not meeting the sales requirements; is that right?  
 14:33:51 8 MR. KELLY: Object to the form.  
 14:34:00 9 MR. CERSKI: And you can refer to  
 14:34:03 10 Paragraph part 2 (a) and (b.)  
 14:34:15 11 MR. KELLY: Chris, you're reading it  
 14:34:27 12 differently than I am. It says non-exclusive.

14:34:22 13 MR. CERSKI non-exclusive. I'm  
 14:34:24 14 sorry.  
 14:34:24 15 MR. KELLY: You want to rephrase  
 14:34:25 16 that one?  
 14:34:26 17 MR. CERSKI: Sure.

14:34:30 18 Q- (BY MR. CERSKI apologize. It

14:34:33 19 does say non-exclusive. But the agreement does say  
 14:34:36 20 that the manufacturer will only appoint an additional  
 14:34:39 21 distributor to this territory if the manufacturer  
 14:34:43 22 finds it necessary? Am I reading that right?  
 14:34:57 23 A. What is contract says, it's a  
 14:34:59 24 non exclusive.  
 14:35:00 25 Q. Right.

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 Examination by Mr. Cerski

14:35:03 1 A. Therefore, for a given territory. And the  
 24:35:12 2 manufacturer reserves the right that he could appoint  
 14:35:17 3 another one, if necessary.  
 14:35:23 4 Q. Well, that he would only appoint if  
 14:35:27 5 necessary? I mean, TIm mixing words here.

14:35:32 6 MR. KELLY: Objection.  
 14:35:34 7 MR. CERSKI not going to get to a  
 14:35:37 8 legal -  
 14:35:37 9 MR. KELLY really it says what it  
 14:35:39 10 says.  
 14:35:40 11 Q. (BY MR. CERSKI) My point is, though, that  
 14:35:42 12 it's Rotax's intent that Kodiak will serve this  
 14:35:46 13 territory, Rotech will serve this territory, and its  
 14:35:50 14 other distributors will serve the areas as defined in  
 14:35:55 15 their contracts; is that correct?  
 14:35:56 16 A. That's correct.  
 14:35:58 17 Q. Are there requirements to become a  
 14:36:00 18 distributor.  
 14:36:26 19 (Interpreter interprets)  
 14:36:38 20 THE WITNESS: In general he has to -  
 14:36:41 21 to have an understanding of the market and the  
 14:36:54 22 territory and should have the right resources to be  
 14:37:01 23 able to serve the market.  
 14:37:05 24 Q. (BY MR. CERSKI): Is there any training  
 14:37:07 25 involved when you become a distributor from Rotax?

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14:37:11 1 A. Rotax does provide training to the  
 14:37:14 2 authorized distributor in Austria.  
 14:37:18 3 Q. Is it a single training course, or is it  
 14:37:22 4 multiple training that happens year after year?  
 14:37:28 5 A. Rotax offers this on a regular base -  
 14:37:37 6 Q~ For -  
 14:37:38 7 A. -- to the authorized distributor.  
 14:37:41 8 Q- Okay. Do you publish a distributor list?  
 14:37:S1 9 A. what do you mean with publish?  
 14:37:53 10 Q. Meaning how do you -- how do you let end  
 14:37:58 11 users know that there's a distributor available?  
 14:36:06 12 A. In any engine delivery which is sold  
 14:38:15 13 ex-works of Rotax, there is documentation included,  
 14:38:20 14 such as operator's manuals and others. In this is  
 14:38:26 15 defined also included the current status of the  
 14:38:29 16 authorized Rotax distributor.  
 14:38:34 17 Q. Okay. And if I was back home in the United  
 14:38:41 18 States in Pennsylvania and I wanted to buy a Rotax  
 14:38:44 19 engine, how would I know to go -- how would I know  
 14:38:51 20 where to go? is there a list provided elsewhere, on  
 14:38:54 21 your website or anywhere else?  
 14:39:05 22 A. There is a Rotax aircraft engine website  
 14:39:11 -23 23 which provides technical information and supporting  
 14:39:21 24 information to the product itself and a list of the  
 1.4:39:28 25 authorized Rotax distributors for aircraft engines.

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**Examination by Mr. Cerski**

14:39:40 1 MR. KELLY: Off the record.  
 08-02:18 2 (Discussion off the record).

14:39:54 3 Q. (BY MR. CERSKI): Has anyone ever approached  
 14:40:13 4 you to become a distributor for the United States?  
 14:40:22 5 A. Not that I'm aware.  
 14:40:28 6 Q. Is there any reason why an authorized  
 14:40:47 7 distributor is not located in the United States?  
 14:40:58 8 A. Kodiak is serving an -- the territory -  
 14:41:10 9 THE INTERPRETER: Territory.  
 14:41:13 10 THE WITNESS: North, middle  
 14:41:22 11 and South America, and it's a geographically  
 probably  
 14:41:27 12 the best place to be in the middle. it is a business  
 14:41:31 13 decision from Kodiak.  
 14:41:33 14 Q. (BY MR. CERSKI): If Kodiak decided to move  
 14:41:36 15 to Florida, just as an example, in the United States,  
 14:41:41 16 would Rotech need to -- would Rotax need to be  
 14:41:45 17 involved in that decision?  
 14:41:46 18 MR. KELLY: Object to the form.  
 14:42:00 19 (Interpreter and witness confer)

14:42:03 20 THE WITNESS: Yeah. Well, it --  
 the

14:42:57 21 contract is issued of Kodiak, Nassau, Bahamas; and  
 14:43:04 22 that means according to the contract that there would  
 14:43:07 23 be a change of the contract and, Lherefore, there has  
 14:43:11 24 to be a mandate according to the contract  
 14:43:13 25 definitions.

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 Examination by Mr. Cerski

14:43:18 1 MR. KELLY: He sounds like a lawyer on  
 14:43:19 2 that one.  
 14:43:20 3 MR. CERSKI: It does. I'm -  
 14:43:27 4 Q. (BY MR. CERSKI): Other than amending the  
 14:43:30 5 title of the contract or any possible legal  
 14:43:32 6 ramifications that need to be done to change the  
 14:43:34 7 address, would Rotax prohibit Kodiak from moving to  
 14:43:45 8 the United States?  
 14:43:47 9 MR. KELLY: Object to the form.  
 14:43:51 10 THE WITNESS: No.

14:43:57 11 Q. (BY MR. CERSKI) Do you maintain a file on  
 14:43:59 12 each of your distributors at Rotax?

14:44:02 13 A. What -- what do you mean with "file?"  
 14:44:18 14 Q. Well, I would imagine that somewhere -- oh,  
 14:44:22 15 well, what I mean by "file" is like in a filing  
 14:44:25 16 cabinet there's a bunch of folders and one of them  
 14:44:29 17 would say "Kodiak Research," and in that file you  
 14:44:33 18 would have, well, maybe the contract, maybe you would  
 14:44:36 19 have purchase orders, maybe you would have  
 14:44:40 20 correspondence. I don't know. I'm just guessing.  
 14:44:41 21 But that's what I mean by "file."  
 14:45:02 22 A. We will keep the signed contract of a  
 14:45:06 23 distributor. As well we will keep a certain amount

14:4S:12 24 of purchase orders, invoices of each purchase  
14:45:22 25 order --

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14:45:22 1 Q. Uh-huh.  
14:45:23 2 A. -- on the -- of the authorized  
14:45:26 3 distributors.  
14:45:28 4 Q. Have you had correspondence with Rotech or  
14:45:33 5 Kodiak as it relates to the sale of engines, meaning  
14:45:46 6 their sale of engines?

14:45:47 7 A. You mean their sales?  
14:45:49 8 Q. Their sales, yeah. Their productivity.  
14:45:52 9 (Interpreter interprets)  
14:46:01 10 THE WITNESS: No.  
14:46:05 11 MR. CERSKI: It's a good time for a  
14:46:06 12 break.  
14:46:09 13 MR. KELLY: Okay.  
14:46:10 14 (Recess taken)  
15:00:27 15 Q- (BY MR. CERSKI: Can you name for me

15:00:30 16 Kodiak's dealers or service centers in the United  
15:00:34 17 States?  
15:00:38 18 ABy my best recollection -- and I don't know  
15:00:47 19 if it's accurate, because I'm not anymore involved in  
15:00:51 20 the aircraft business -- I think it's LEAF, CPS,  
15:01:06 21 California Power Systems, and there must be in a  
15:01:22 22 total four or five.  
15:01:23 23 Q. Okay. And have you ever met any of the  
15:01:31 24 dealers?  
15:01:35 25 A. Yes.

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Examination by Mr. Cerski

15:01:35 1 Q- And where did you meet them at?  
15:01:37 2 A. In Austria.  
15:01:39 3 Q. And what was the purpose of their visit to  
15:01:42 4 Austria?  
15:01:43 5 A. It's quite a long time back. They came to  
15:01:51 6 visit Austria for a factory tour.

15:01:54 7 Q. And was that a factory tour that Rotax  
25:01:S7 8 invited them to come to?

15:02:00 9 A. No. It was a request of our authorized  
15:02:04 10 distributor to bring them -- to show them the  
15:02:09 11 factory.  
15:02:10 12 Q. And has Rotax ever provided training to the  
15:02:17 13 service centers?  
15:02:18 14 A. No.  
15:02:22 15 Q. When they were -- when they were here in  
15:02:26 16 Austria, did you discuss the sale of the engines?

15:02:32 17 A. No.

15:02:34 18 Q. Advertising?  
 15:02:36 19 A. No.  
 15:02:42 20 Q. Any technical aspects of the engines?  
 15:02:46 21 A. No.  
 15:03:02 22 Q. Now, the contracts provide for the  
  
 15:03:09 23 distributor permitted to set up a dealer  
 15:03:12 24 network or these service centers.  
 15:03:16 25 What is Rotax's intent that these

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Josef Fuerlinger - December 3, 2004  
 Examination by Mr. Cerski

15:03:20 1 service centers or dealers will do? What's the  
 15:03:23 2 reason for having them in the contract?  
 15:03:50 3 A. Rotax basically allows the authorized  
 15:03:53 4 distributor to set up his own network of authorized  
 15:04:13 5 service centers of such distributor to be able to  
 15:04:27 6 service the product in this given territory.  
 15:04:32 7 Q. Okay. So does Rotax anticipate that those  
  
 IS:D4:38 8 dealers will be the first contacts to the end user?  
  
 15:04:48 9 (Interpreter interprets)  
 15:04:51 10 THE INTERPRETER: He asked for the  
 15:04:53 11 meaning of "anticipated."  
 15:04:55 12 Expect, ever.  
 15:05:13 13 (Interpreter and witness confer in  
 1.5:05:16 14 German)  
 15:05:41 15 THE WITNESS: Yes.  
 15:05:57 16 (BY MR. CERSKV: Does Rotax expect that the  
 1.5:05:59 17 dealers will be providing product support for Rotax  
 15:06:03 18 engines?  
 15:06:04 19 A. We expect that our authorized distributor,  
 15:06:12 20 Kodiak, makes sure that his authorized service  
 15:06:19 21 centers provide the relevant service to the product.  
 15:06:43 22 Q. when we were discussing earlier the  
 15:06:46 23 technical information, the service letters that Rotax  
 15:06:49 24 sends out, do you send them directly to the dealers?  
 15:06:54 25 A. No.

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Josef Fuerlinger - December 3, 2004  
 Examination by Mr. Cerski

15:06:55 1 Q. Have you ever sent them directly to the end  
 15:06:57 2 user?  
 15:06:58 3 A. No.  
 15:07:00 4 Q. Does Rotax provide them to a certain  
 15:07:06 5 company that, then, combines them into a book and  
 15:07:11 6 then they sell the book?  
 15:07:15 7 A. No.  
 15:07:23 8 Q. Does Rotax expect the -- does Rotax expect  
 15:07:34 9 the dealers to market the engines in the area that  
 15:07:39 10 they're in?  
 15:07:51 11 (Interpreter interprets)  
 15:07:58 12 THE WITNESS: We expect that the  
 15:08:00 13 authorized distributor, in this case Kodiak Research  
 15:08:05 14 Canada -- or, sorry -- Kodiak Research, Limited,

15:08:16 15 Nassau, Bahamas -- follow that -- what is defined in  
 15:08:27 16 the contract.  
 15:08:34 17 Q. (BY MR. CERSKI): Does Rotax provide -  
 15:08:38 18 well, strike that.  
 15:08:40 19 Rotax provides a logo to its  
 15:08:43 20 distributors to market its -- the Rotax name, does it  
 15:08:47 21 not?  
 15:08:51 22 A. According to the contract, the authorized  
 15:08:56 23 distributor is allowed to use the Rotax trademark.  
 15:09:01 24 Q. Now, are the service centers allowed to use  
 15:09:04 25 the Rotax trademark?

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 Examination by Mr. Cerski

15:09:06 1 A. Not by the contract.  
 15:09:09 2 Q. Okay. Does Rotax believe that using that  
 15:09:29 3 trademark provides its trademark exposure to the  
 15:09:33 4 market?  
 15:09:36 5 THE INTERPRETER: What do you mean  
 15:09:37 6 Ilexposure?'l  
 15:09:38 7 MR. CERSKI: Let me rephrase it. Bad  
 15:09:42 8 question.  
 15:09:43 9 He was ~~MR~~'t KELLing that one.  
 15:09:47 10 He was ~~MR~~'n' CERSKing that one  
 15:09:49 11 at all.

15:09:50 12 Q. (BY MR. CERSKI) Do you believe publicizing  
 15:09:52 13 the Rotax logo has benefit to Rotax?  
 15:10:17 14 (Interpreter interprets and confers  
 15:10:20 15 with witness)  
 15:10:23 16 Q. (BY MR. CERSKI): For example -- do you need  
 15:10:25 17 an example, maybe?  
 15:10:29 18 MR. KELLY: What's the problem?

15:10:31 19 THE INTERPRETER: He  
 15:10:32 20 understood the question.  
 15:10:33 21 (Interpreter and witness confer)  
 15:10:37 22 THE INTERPRETER: Do you believe? You  
 15:10:39 23 said, "Do you believe?" And he was thinking about  
 15:10:41 24 the "believe."  
 15:10:42 25 MR. CERSKI: Okay.

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Josef Fuerlinger - December 3, 2004  
 Examination by Mr. Cerski

15:10:43 1 THE INTERPRETER: Do you believe  
 15:10:44 2 that -  
 15:10:45 3 THE WITNESS: I would answer the  
 15:10:46 4 question with I don't know.  
 15:10:47 5 Q. (BY MR. CERSKI): Okay. Does publicizing  
 15:10:49 6 the logo provide Rotax any recognition in a  
 15:10:53 7 marketplace?

15:10:58 8 MR. KELLY: Object to the form.  
 15:11:10 9 THE WITNESS: It is not possible for  
 15:11:11 10 me to verify if it would be primary conditions, in  
 15:11:17 11 which factor it would be in primary conditions, so I  
 15:11:21 12 have no fact of that available.  
 15:11:23 13 Q. (BY MR. CERSKI): Well, why would Rotax have  
 15:11:26 14 a trademark?  
 15:11:29 15 A. It's an identification of the product.  
 15:11:52 16 Q- And does Rotax have a marketing department?  
 15:11:56 17 A. No. And I define "marketing department" as  
 15:12:04 18 such which does publications and newspapers for the  
 15:12:07 19 product. That would be my definition of a "market  
 15:12:17 20 department."  
 15:12:17 21 Q. Okay. Is there any department that the  
 15:12:21 22 logo for Rotax falls under, meaning does any specific  
 15:12:29 23 department have responsibility for development of the  
 15:12:33 24 logo?  
 15:12:35 25 A. No.

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Josef Fuerlinger - December 3, 2004  
 Examination by Mr. Cerski

25:12:37 1 Q. Okay. Do you believe that advertising  
 15:12:41 2 helps sell Rotax engines?  
 15:12:53 3 MR. KELLY: Object to the form.  
 15:13:04 4 THE WITNESS: In this case our  
 15:13:09 5 authorized distributor is the one who is responsible  
 15:13:16 6 for the marketing and she (sic) would promote what I  
 15:13:28 7 assume the product -- to sell the product.  
 15:13:33 8 Q. (BY MR. CERSKI): And does -- okay. So you  
 15:13:36 9 just said that promoting the product helps us sell  
 15:13:40 10 the product?  
 15:13:41 11 MR. KELLY: Is that what you meant?  
 15:13:48 12 T14B WITNESS: What I meant, he may do  
 15:13:50 13 advertising or not do advertising; that is up to him  
 15:13:52 14 to decide to make advertising or not.  
 15:13:56 15 Q- (BY MR. CERSKI): actually -- this  
 15:14:09 16 paragraph here on Rotax 9. It's actually not up to  
 15:14:15 17 him. It's required by the contract as a duty of the  
 15:14:18 18 distributor to advertise the product.  
 15:14:26 19 MR. KELLY: Question?  
 15:14:27 20 Q- (BY MR. CERSKI): Is it not?  
 15:14:28 21 MR. KELLY: Object to the form.  
 15:14:30 22 THE WITNESS: Well, it says, the  
 15:14:32 23 paragraph, shall ensure that it and the dealers  
 15:14:43 24 advertise display, demonstrate the product, including  
 15:14:45 25 safety features of the product in the territory, and

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15:14:50 1 it goes on.  
 15:14:52 2 Q. (BY MR. CERSKI): the purpose of that is  
 15:14:54 3 to expose the product to the territory; is that  
 15:14:57 4 correct?

15:15:02 5 A. That's what the paragraph says.  
 15:15:05 6 Q. You were the vice president during the time  
 15:15:09 7 period when this contract was entered into?  
 15:15:12 8 A. Correct.

15:15:12 9 Q. And your interpretation of what is meant by  
 15:15:16 10 that contract is that exposing the product -  
 15:15:21 11 MR. CERSKI: what did I even ask? I  
 IS:15:22 12 don't remember at this point.  
 15:15:44 13 (The record was read as requested, and  
 15:15:44 14 interpreter and witness confer.

15:16:00 15 THE INTERPRETER, he doesn't  
 15:16:02 16 know what "exposed" means. And as I understand, it  
 15:16:06 17 means make it -- increase the brand awareness or make  
 15:16:10 18 it known.  
 15:16:12 19 MR. CERSKI: Make it known.  
 15:16:13 20 (Interpreter and witness confer)  
 15:16:19 21 THE WITNESS: Well, I can only go back  
 15:16:21 22 on the paragraph, what it is, and it says shall  
 15:16:25 23 ensure that the dealers advertise, display and  
 15:16:27 24 demonstrate the product, including the safety  
 15:16:30 25 features of the product and the territory. It shall

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Josef Fuerlinger - December 3, 2004  
Examination by Mr. Cerski

15:16:34 1 encourage and assist the dealers to advertise,  
 15:16:37 2 display, demonstrate and sell said product, and it  
 15:16:42 3 goes further on.

15:16:43 4 Q- (BY MR. CERSKI): Okay. So does advertising  
 15:16:47 5 help sell the product?  
 15:16:51 6 MR. KELLY: Object to the form.  
 15:17:15 7 THE WITNESS: Yes.  
 15:17:18 8 Q. (BY MR. CERSKI). Let me show you a --

15:17:34 9 MR. CERSKI: I hate to mark this  
 15:17:36 10 entire thing. I'm going to mark the cover for this  
 15:17:53 11 right now, but what I'll do when I get back to the

15:17:56 12 office is I'll make a copy of the cover and then the

15:17:59 13 specific pages that I reference here. Is that okay

15:18:03 14 rather than -

15:18:04 15 MR. KELLY: Yes. The cover and -- is

15:18:05 16 that an old one? It's an old one, so we might need

15:18:09 17 to get a copy from --

15:18:11 18 MR. CERSKI: 2002. I mean, I have it.

15:18:13 19 I'll just put it in the file.

15:18:14 20 MR. KELLY: All right. Copy the

15:18:17 21 copyright page, too, then.

15:18:19 22 MR. CERSKI: Okay.

15:18:22 23 Q. (BY MR. CERSKI) Is this the Rotax logo?

15:18:25 24 A. That's the Rotax logo but without the

15:18:32 25 registration.

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Josef Fuerlinger - December 3, 2004  
Examination by Mr. Cerski

15:18:33 1 Q- Okay. And then -

15:18:37 2 MR. KELLY: Just so the record's

15:18:39 3 clear, it's a 2002 CPS, California Power Systems,

15:18:43 4 catalog, correct?

15:18:47 S MR. CERSKI: Yes.

15:19:04 6 Q. (BY MR. CERSKI) Well, it's an

15:19:06 7 order form right before 169.

15:19:15 8 MR. KELLY: 27.

15:19:17 9 (Interpreter and Mr. Kelly confer)

15:19:22 10 MR. KELLY: Should it be 24?

15:19:25 11 MR. CERSKI: Will go backward then.

15:19:27 12 Q. (BY MR. CERSKI): Is that a registered Rotax

15:19:27 13 logo?

15:19:34 14 A. Not on this form.

15:19:35 15 Q. But it does have the registration on it?

15:19:52 16 A. It has the R on it, but that does not mean

15:19:55 17 that it's a registered logo.

15:19:57 18 Q. Okay.

15:19:59 19 MR. CERSKI: Is it 24? 1 -

15:20:03 20 THE INTERPRETER: I thought it was 24.

15:20:08 21 Q. (BY MR. CERSKI): And is that the Rotax logo

15:20:13 22 which is Exhibit 24?

15:20:23 23 MR. KELLY: 27 and 24.

15:20:36 24 THE WITNESS: This one on the -- would

15:20:37 25 be a registered (sic) Rotax logo. It has the R on

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Examination by Mr. Cerski

15:20:43 1 it

15:20:43 2 MR. CERSKI: Okay.

15:20:45 3 THE INTERPRETER: Registered.  
 15:20:47 4 THE WITNESS: Registered?  
 15:20:49 5 THE INTERPRETER: Registered logo.  
 15:20:51 6 THE WITNESS: Yeah.  
 15:20:52 7 Q. (BY MR. CERSKI): And this -- this is  
  
 15:20:S4 8 published by Leading Edge -- I'm sorry, the  
  
 15:20:57 9 distributor is Leading edge. It is published by  
 15:21:03 10 Ultralight Flying, which is a publication in the  
  
 15:21:0G 11 United States.  
  
 I-S:21:06 12 This is one of Kodiak's authorized  
  
 15:21:09 13 service centers and they're using your logo?  
 15:21:13 14 MR. KELLY: "This" being what, Leading  
 15:21:15 15 Edge?  
 15:21:16 16 MR. CERSKI; Leading Edge.  
 15:21:17 17 Q. (BY MR. CERSKI): And Exhibit 27, this is a  
 15:21:20 18 CPS -- California Power Systems, another one of  
 15:21:24 19 Kodiak's distributors -- or dealers, using at least  
  
 IS:21:30 20 variations of the Rotax logo.  
  
 15:21:35 21 According to the contract they  
 15:21:36 22 shouldn't be using this?  
 15:21:41 23 MR. KELLY: Well, objection in that  
 15:21:42 24 "they" party not the contract, so it's a  
 15:21:45 25 little bit misleading.  
  
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Josef Fuerlinger - December 3, 2004  
 Examination by Mr. Cerski

15:21:47 1 MR. CERSKI: Well, the contract says  
 15:21:51 2 that service centers cannot use -  
 15:21:54 3 MR. KELLY: The service centers are  
 15:21:55 4 not a party to the contract. So just in terms of  
 15:21:57 5 making sure the question's clear, when you say "they"  
 15:22:01 6 according to the contract, "they" shouldn't be using  
 15:22:04 7 this.  
 15:22:04 8 MR. CERSKI: Oh, okay. Service  
 15:22:05 9 centers.  
 15:22:05 10 Q. (BY MR. CERSKI): According to the contract,  
 15:22:07 11 service centers should not be using this logo in any  
 15:22:10 12 advertising?  
 15:22:12 13 A. That's correct.  
 15:22:15 14 Q. And has Rotax taken any action to prevent  
 15:22:18 15 the service centers from using the logos?  
 15:22:34 16 A. Not that I'm recalling.  
 15:23:04 17 Q. Has Rotax ever provided any -- a man by the  
 15:23:09 18 name of Eric Tucker training, technical training?  
 15:23:38 19 (Discussion off the record)  
  
 IS:23:40 20 THE WITNESS: the case.  
  
 15:23:44 21 Q. (BY MR. CERSKI) you don't know  
 15:23:46 22 or you do know? What do you mean by "might be the  
 15:23:51 23 case?"  
 15:23:52 24 A. Might be possible, but I don't recall it,

15:23:56 25 when it was.

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Examination by Mr. Cerski

15:24:04 1 Q. Okay. I'm sorry. So you did train him,  
 15:24:07 2 but you don't recall when it was. Is that -  
 15:24:12 3 A. Yes.  
 15:24:16 4 (Interpreter and witness confer)  
 15:24:25 5 Q. (BY MR. CERSKI): Now, one of the other  
 15:24:26 6 responsibilities of your dealers is to sell a certain  
 15:24:30 7 amount of products; is that correct? Well --

IS:24:38 6 MR. KELLY: Suggest a

15:24:40 9 certain amount, a number. I mean -  
 15:24:46 10 Q. (BY MR. CERSKI): the  
 15:24:47 11 responsibilities according to the contract is that  
 15:24:50 12 they sell a minimum amount of engines; is that  
 15:24:53 13 correct?  
 15:24:54 14 A. The authorized distributor of Rotax.

IS:24:58 15 Q- Okay. And another responsibility would be

15:25:04 16 that they administer the warranty for the Rotax  
 15:25:11 17 engine.  
 would that be correct?  
 15:25:14 18 A. You mean the authorized distributor for -  
 25:25:17 19 Q- Authorized distributor, yes.  
 15:25:20 20 A. -- for Rotax engines? They have to duty  
 15:25:23 21 to perform the warranty work.  
 15:25:29 22 Q. And the warranty that they have the duty  
 15:25:32 23 regarding, it's a written warranty provided by Rotax;  
 15:25:36 24 is that correct?  
 15:25:37 25 A. Correct.

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Examination by Mr. Cerski

15:25:41 1, Q. How -- how is the warranty administered?  
 15:25:50 2 I'll give you an example.  
 15:25:52 3 If someone in the United States has a  
 15:25:53 4 problem with a Rotax engine and wants to have it  
 15:25:56 5 serviced under the warranty, how would they go about  
 15:26:01 6 getting it serviced under the warranty?  
 15:26:10 7 A. I expect he would go back to the **company** or  
 15:26:14 8 person from whom he has purchased the engine or the  
 15:26:18 9 product.  
 15:26:19 10 Q. But they at some point have to at some  
 15:26:24 11 point get back to Kodiak; is that correct?  
 15:26:27 12 MR. KELLY: The what does?  
 15:26:29 13 MR. CERSKI: The person who's trying  
 15:26:31 14 to get the engine fixed.  
 15:26:36 15 THE WITNESS: As I said, I don't know  
 15:26:40 16 from whom he has purchased the engine or the product.  
 15:26:43 17 He would go back to -- to those persons which whom he  
 15:26:48 18 has entered into a contract which could -- is a  
 15:26:53 19 purchase of a product, and I would -- I would expect

IS:26:57 20 that he would get -- handle the warranty from this  
 15:27:01 21 person, whoever it might be  
 15:27:05 22 Q. (BY MR. CERSKI) that Rotax  
 15:27:06 23 issues, it's a warranty that's given to the end user;  
 15:27:11 24 is that correct?  
 15:27:18 25 A. The definition is very clear in the

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 Examination by Mr. Cerski

15:27:21 1 operator's manual how the warranty is handled.  
 15:27:24 2 Q. Okay. And Rotax requires **under the**  
 15:27:39 3 contract that Kodiak and its dealers honor the Rotax  
 IS:27:43 4 warranty at no cost to the user, the end user; is  
 15:27:48 5 that correct?  
 15:27:50 6 A. If it falls under the definition of the  
 15:27:54 7 limited warranty, that's what the contract says.  
 15:28:06 8 Q. Now, if someone purchased an engine from  
 15:28:10 9 a -- say they purchased it in Europe, from a  
 15:28:13 10 distributor in Europe but then they moved to the  
 15:28:1G 11 United States, would they be able to use Kodiak for  
 15:28:20 12 warranty or would they have to go back to Europe\*.  
 15:28:37 13 A. As T said before, I expect those persons  
 15:28:41 14 would go back with whom he has entered the purchase  
 15:28:45 15 agreement to get the warranty performed.  
 15:28:47 16 Q. Does Rotax prohibit the person to going to  
 15:28:52 17 wherever the closest geographic dealer or distributor  
 15:28:56 18 would be to honor the warranty?  
 15:30:01 19 A. No.  
 15:30:05 20 Q. What's the procedure for registering for  
 15:30:09 21 the warranty? Do the -- do the end users actually  
 15:30:14 22 have to fill out a form or anything of that nature to  
 15:30:17 23 register for the warranty?  
 15:30:27 24 A. There is a clear definition in the  
 15:30:28 25 operator's manual. on the backside how it should be

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 Examination by Mr. Cerski

15:30:33 1 done.  
 15:30:36 2 Q. Does Rotax have any warranty cards from end  
 15:30:40 3 users?  
 15:30:42 4 A. No.  
 15:30:50 5 Q. I know that there's a -- I've been on a  
 15:30:54 6 website. I think it was Rotax aircraft engines. I  
 15:30:57 7 think it discuss registering for a warranty over  
 the  
 15:31:01 8 Internet. Is that administered by Rotax?  
 15:31:09 9 MR. KELLY: You mean within the  
 15:31:11 10 relevant time period, or is this -  
 15:31:13 11 MR. CERSKI: Yes.  
 IS:31:15 12 ~~THE END~~ I'm aware.  
 15:31:18 13 Q. (BY MR. CERSKI): Now, I want you to assume

15:31:21 14 that the end user has taken an engine or whatever -  
 15 whatever the problem was into a dealer, the dealer  
 16 honored the warranty and then sent whatever the  
 17 invoice was to Kodiak.  
 15:31:36 18 How does Kodiak get reimbursed from  
 15:31:39 19 Rotax for the warranty work that was done under the  
 15:31:42 20 distribution agreement?  
 15:31:51 21 A. Kodiak would send us an invoice, and that's  
 15:31:57 22 collecting many items. And we -- he would get  
 15:32:07 23 reimbursed for the amount, what the -- what he has  
 15:32:12 24 performed.  
 15:32:13 2S Q. Now, the contract seems to indicate that

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15:32:23 1 Rotax would evaluate whether or not the warranty -  
 15:32:29 2 whether or not the problem was properly under the  
 15:32:32 3 warranty before it reimburses Kodiak. is that -- is  
 15:32:36 4 that done?  
 15:32:39 5 (Interpreter and witness confer)  
 15:32:50 6 THE INTERPRETER: He says he  
 15:32:51 7 understands the question but it seems a bit  
 15:32:54 8 distorted.  
 15:32:55 9 MR. CERSKI: Okay.  
 15:32:56 10 THE INTERPRETER: Do you want to me to  
 15:32:58 11 translate it?  
 15:33:00 12 THE WITNESS: to answer  
 15:33:02 13 my --  
 15:33:03 14 MR. CERSKI: Maybe it would be easier  
 15:33:04 15 if I just do this.  
 15:33:08 16 (Interpreter interprets)  
 15:33:23 17 THE WITNESS: I will try to do my best  
 15:33:24 18 to answer the question.  
 15:33:28 19 Q. (BY MR. CERSKI): Okay.  
 15:33:30 20 A. Rotax has very trust in the Kodiak's  
 15:33:36 21 judgment of performing warranty handling and -- and  
 15:33:40 22 we had no reason to perform any -- to mistrust the  
 IS:33:47 23 judgment of Kodiak.  
 15:33:49 24 Q- Okay. So when Kodiak does the same -- does  
 15:33:53 25 the same trust apply for Rotech?

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15:33:56 1 A. Correct.  
 15:33:56 2 Q. So when Kodiak or Rotech submit warranty  
 15:34:01 3 claims to you, you just honor them?  
 15:34:06 4 A. Correct.  
 15:34:06 5 Q- Okay. Now, they send you an invoice. Do  
 15:34:11 6 you pay them in cash, or do you give them a credit  
 15:34:16 7 for future purchases, or how does -- how do they get  
 15:34:21 8 refunded for the warranty?

15:34:25 9 A. Most likely we give them a credit for the  
 15:34:35 10 future purchase.  
 15:34:50 11 Q. How about if someone, the end user, has a  
 15:34:53 12 technical service question, where do they have to go?  
 15:34:56 13 A. I assume he would call up one of the  
 15:35:03 14 service centers.  
 15:35:05 15 Q. Could they call Rotax?  
 15:35:12 16 MR. KELLY: Object to the form.  
 15:35:27 17 MR. CERSKI: Let me withdraw the  
 15:35:28 18 question, and I'll ask it a little differently.  
 15:35:31 19 Q. (BY MR. CERSKI): Would Rotax give technical  
 15:35:33 20 information to an end user?  
 15:35:35 21 A. No.  
 15:35:39 22 Q. And Rotax expects its distributors to  
 15:35:43 23 provide that type of product support to end users?  
 15:35:47 24 A. Correct.  
 15:36:14 25 Q. This is ruerlinger 16, and it is 2364 to

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Examination by Mr. Cerski

15:36:21 1 2370, the Supervisory Board Minutes for  
 15:36:25 2 November 16th, 1999.  
 15:36:38 3 If you can just read two -- these two  
 15:36:41 4 highlights and then I'll ask you my question again,  
 15:36:45 5 and you can read more if you could after I ask my  
 15:36:49 6 question. It's talking about sales service reports,  
 15:37:39 7 and they seem to be coming from customers.  
 15:37:43 8 And my first question is: What is a  
 15:37:45 9 sales service report?  
 15:37:53 10 A. It does not say. If I read the sentence  
 15:38:33 11 clearly and by my basic understanding -  
 15:38:37 12 Q. Well, actually, I'm not asking you to  
 15:38:40 13 interpret it off the page.  
 15:38:42 14 A. In English?  
 15:38:42 15 Q. Let me ask it this way: Do you know -- do  
 15:38:46 16 you know based on your work experience at Rotax what  
 15:38:48 17 a sales service report is?  
 15:38:50 18 MR. KELLY: I think I see  
 15:38:52 19 what the problem is here.  
 15:38:53 20 MR. CERSKI: Oh, okay.  
 15:38:55 21 MR. KELLY: Question is whom does  
 15:38:58 22 after-sales service report to? That's the way I -  
 15:39:01 23 in other words, there's a department or something  
 15:39:03 24 called after-sales service, and the question is to  
 15:39:06 25 whom do they report.

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Josef Fuerlinger - December 3, 2004  
Examination by Mr. Cerski

15:39:09 1 THE WITNESS exactly the  
 15:39:11 2 question, how I read it.  
 15:39:13 3 MR. KELLY: You see?  
 25:39:15 4 MR. CERSKI: Oh, I see.  
 15:39:17 5 MR. KELLY: You're outvoted.  
 15:39:19 6 MR. CERSKI: I see it. I'm sorry. I  
 15:39:21 7 read all these documents yesterday and after a while

IS:39:22 8 it's -  
 15:39:23 9 MR. KELLY: Yeah, it's definitely not  
 15:39:25 10 material to -  
 15:39:25 11 Q. (BY MR. CERSKI): Well, you see right in the  
 15:39:2G 12 beginning here it says, "Most feedback from the  
 15:39:29 13 customers currently arrives in the marketing group,"  
 15:39:31 14 do you know who the customer is they're referring to?  
 15:39:39 15 A. Well, the customers such as Bombardier,  
 15:39:43 16 Inc., and BMW.  
 15:39:45 17 Q. So it's not like an end user in the United  
 15:39:49 18 States giving some comment that their seat didn't  
 15:39:51 19 work because of the engine or something of that  
 15:39:56 20 nature?  
 15:39:57 21 A. Not at all.  
 15:40:10 22 Q. Now, one of the other responsibilities that  
 15:40:16 23 the distributors have is to provide service for the  
 15:40:20 24 engines, maintenance service for the engines; is that  
 15:40:22 25 correct?

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Examination by Mr. Cerski

15:41:1.7 1 A~ This is what the con -- what I read out of  
 15:41:20 2 the duties of the distributors, but my understanding  
 15:41:32 3 is they should be able to carry out maintenance work  
 15:41:42 4 or repair work on engines.  
 15:41:43 5 Q. Okay. Would you say that the -- that the  
 15:41:56 6 distributors act as a liaison between Rotax and the  
 15:42:02 7 end user?  
 15:42:07 8 MR. KELLY: Object to the form.  
 15:42:11 9 THE WITNESS: The authorized  
 15:42:12 10 distributor of Rotax aircraft engines is a total  
 15:42:16 11 independent organization, corporation of a company,  
 15:42:23 12 which performs -- he does business on his own and he  
 15:42:40 13 is -- on his own responsibility.  
 15:42:40 14 Q. (BY MR. CERSKI): But doesn't the  
 15:42:44 15 distributor do things that Rotax would generally do  
 15:42:48 16 if the distributor did not exist?  
 15:42:51 17 MR. KELLY: Object to the form.  
 15:43:06 18 THE WITNESS: Um -  
 15:43:07 19 MR. KELLY: You know, I've been pretty  
 15:43:08 20 reasonable about hypothetical questions today since  
 15:43:11 21 this was supposed to be a fact-based deposition, but  
 15:43:14 22 I really don't see how he should be required to  
 15:43:17 23 answer a question about what would happen if Kodiak  
 15:43:20 24 didn't exist. It's -- it's make believe.  
 15:43:25 25 Q\_ (BY MR. CERSKI): Well, all right, let's ask

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15:43:29 1 it this way, then: Rotax -- we've already  
 15:43:39 2 established that Rotax provides the warranty for  
 15:43:42 3 engines. That's correct?  
 IS:43:50 4 (Witness confers with interpreter in  
 15:43:51 5 German, and interpreter interprets)  
 15:44:07 6 THE WITNESS: Yes, this we already  
 15:44:12 7 discussed.

15:44:12 8 Q- (BY MR. CERSKI): And that's a duty that  
 15:44:15 9 Rotax assigned to Kodiak.  
 15:44:20 10 MR. KELLY: Object to the form.

15:44:23 11 Q. (BY MR. CERSKI): Yes?

I.S:44:25 12 A. That's what has been defined in the  
 15:44:30 13 contract.  
 15:44:34 14 Q. And let me ask it this way: Do you

15:44:30 15 consider the distributors to be intermediaries

15:44:33 16 between the end user and the customer -- end user and  
 15:44:39 17 Rotax?

15:45:00 18 MR. KELLY: Object to the form.  
 15:45:13 19 THE WITNESS: The distributor is -

15:45:14 20 the authorized distributor of Rotax aircraft engines  
 15:45:16 21 is, as I said before, an independent body from Rotax.  
 15:45:20 22 He per -- he does business for a defined product in a  
 15:45:25 23 given distribution area.

15:45:27 24 Q. (BY MR. CERSKI): I understand that. But  
 15:45:30 25 the customer cannot go directly to Rotax to have its

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 Examination by Mr. Cerski

25:45:36 1 honor -- its warranty honored, can it?  
 15:45:48 2 A. As the contract is defined, the warranty  
 15:45:51 3 would be provided to our authorized distributor.  
 15:45:56 4 Q. Okay. And the end customer cannot --

IS:46:03 5 strike that.

15:46:05 6 Rotax will not provide the end  
 15:46:07 7 customer with technical information; is that  
 correct?

15:46:10 8 A. That's correct.  
 15:46:11 9 Q. And the service information letters, the --

15:46:19 10 Rotax does not send them to the end customer, do  
 15:46:23 11 they?  
 15:46:24 12 A. Not that I'm aware.  
 15:46:25 13 Q. And you cannot buy a Rotax -- an end  
 15:46:30 14 customer cannot buy a Rotax engine from Rotax?  
 15:46:34 15 A. No.  
 15:46:35 16 Q. So the intermediary for those things that I  
 15:46:40 17 just named between the end user and Rotax is the  
 15:46:46 18 distribution center or the distributor, isn't it?  
 15:46:50 19 MR. KELLY: Objection. I don't know  
 15:46:51 20 what you mean by "intermediary," but I -- what  
 15:46:55 21 bothers me is that it seems to have some sort of a  
 15:46:58 22 legal connotation that might mislead him.  
 15:47:01 23 MR. CERSKI: Okay. And I'm not trying  
 15:47:02 24 to make actually a legal connotation. What I'm  
 15:47:05 25 trying to ask is whether Rotax uses the distribution

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15:47:09 1 center to funnel all this information through to the  
 15:47:12 2 end user.  
 15:47:20 3 (Interpreter and witness confer)  
 15:47:44 4 THE WITNESS: Rota-x is specialized in

15:47:48 S good manufacturing of products, but we don't have the

15:47:51 6 expertise in-house of distributing products. And due  
 15:47:58 7 to the given fact that the Rotax aircraft engines are  
 15:48:08 8 also sold in China or in other countries of the  
 15:48:17 9 world, we don't have the different -- not the means  
 15:48:22 10 or capabilities to handle such. That's why we have  
 15:48:26 11 authorized distributors.

15:48:27 12 Q. (BY MR. CERSKI): Okay. We've already  
 15:48:44 13 discussed that the authorized distributors are  
 15:48:48 14 required to market the engines or advertise the  
 15:48:51 15 engines within their territory; is that correct?

15:48:53 16 A. Yes, we did.

15:48:57 17 Q. And the contract requires them to do that;  
 15:48:59 18 is that correct?

15:49:03 19 A. Yes.

IS:49:03 20 Q. And Rotax must approve advertisements

15:49:15 21 before they're -- they're published; is that correct?

15:49:42 22 MR. CERSKI withdraw the  
 15:49:44 23 question.  
 15:49:44 24 MR. KELLY: No question?  
 15:49:45 25 MR. CERSKI question. That's

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Examination by Mr. Cerski

15:49:46 1 enough.  
 15:49:48 2 (BY MR. CERSKI) provide its

15:49:50 3 distributors any incentive program for selling

IS:49:S3 4 engines or meeting quotas?

15:50:00 5 A. We have based on the economical scales a  
 15:50:20 6 quantity - (Interpreter confer, and  
 15:50:29 7 interpreter interprets)  
 15:50:34 8 THE INTERPRETER prices.  
 15:50:43 9  
 15:50:45 10 Staggard prices.  
 15:50:48 11 THE WITNESS: quantities.  
 15:50:52 12 Q. (BY MR. CERSKI) because Kodiak sells  
 15:50:57 13 approximately -- Kodiak sells approximately one third  
 15:51:08 14 of the 5,000 average that we talked about: earlier,  
 15:51:12 15 they would be in a different price range for the  
 15:51:14 16 engines than Rotax, who only sells about five to  
 15:51:19 17 eight percent. Is that the way I'm understanding  
 15:51:22 18 you?  
 15:51:26 19 A. Might be the case on certain products but

15:S1:29 20 not on all.

15:51:29 21 Q. Okay. At the end of the year does Rotax  
 15:51:32 22 issue any bonuses to its distributors for meeting  
 15:51:37 23 certain quotas?

15:51:39 24 A. No.  
 15:51:39 25 or exceeding certain quotas?

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 Examination by Mr. Cerski

15:51:41 1 A. No.  
 15:51:49 2 Q\_ And by "bonuses," I also mean  
  
 15:51:53 3 non-monetarily, like a vacation or something of that  
 15:51:56 4 nature.  
  
 15:51:58 5 A. No.  
 15:51:58 6 Q\_ No gifts?  
 15:51:59 7 A. No.  
 15:52:12 8 Q\_ And Rotax provides its distributors with  
  
 15:52:18 9 suggested retail pricing?  
 15:52:20 10 A. Suggested retail prices without any binding  
  
 15:52:26 11 obligations.  
  
 15:52:33 12 Q. And how often do you provide suggested  
  
 1S:52:35 13 retail pricing?  
  
 15:52:43 14 A. once in a year.  
 15:52:49 15 Q\_ Are those prices based on what Rotax  
  
 15:52:52 16 believes the market could withstand?  
 15:S3:01 17 (Interpreter interprets)  
  
 15:53:19 18 THE WITNESS: Yes.  
 15:53:19 19 MR. KELLY: It's that word again,  
 15:53:21 20 "market."  
  
 15:53:23 21 THE INTERPRETER: What the market  
 15:53:24 22 withstands.  
  
 15:53:25 23 THE WITNESS: Withstands.  
 15:53:27 24 THE INTERPRETER: Stands.  
  
 15:53:30 25 Q\_ (BY MR. CERSKI): Does Rotax believe it's in  
  
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 Examination by Mr. Cerski

15:S3:33 1 their distributor's best interest to sell the engines  
 15:53:37 2 at the suggested retail price?  
 15:53:43 3 THE INTERPRETER: Could you repeat the  
 15:53:45 4 question. I didn't hear it  
  
 15:53:47 5 MR. CERSKI: Sure.  
 15:53:48 6 Q. (BY MR. CERSKI): Does Rotax believe that  
 15:53:51 7 selling its engines at the suggested retail price is  
 15:53:57 8 in the best interest of its distributors?  
 15:54:22 9 (Interpreter interprets)

IS:54:22 10 THE WITNESS: It is used just as a  
 15:54:24 11 general guideline as suggested to nonbinding

15:54:28 12 recommended retailers and has no binding obligation  
 15:54:33 13 to the authorized distributor, and he can define to  
 15:54:37 14 which price he may want to sell or may not want to  
 15:54:44 15 sell a product.

15:54:45 16 Q. (BY MR. CERSKI). How many distributors per  
 15:55:12 17 aircraft engine do you have throughout the world?

15:55:16 18 A. Around the world, approximately between 30  
 15:55:20 19 to 35.

15:55:25 20 Q- Who is the -- what distributor is the  
 15:55:31 21 number one seller of aircraft engines?

15:55:37 22 A. In regards to what?

15:55:41 23 MR. KELLY: Who has the most sales?

15:55:44 24 Q. (BY MR. CERSKI); who has the most  
 15:55:44 25 sales?

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Josef Fuerlinger - December 3, 2004  
 Examination by Mr. Cerski

15:55:47 1 MR. KELLY: The highest percentage,  
 15:55:49 2 whatever.  
 15:55:55 3 THE WITNESS: The highest percentage

15:55:56 4 is Kodiak Research, Nassau, Bahamas.  
 15:56:29 5 Q. (BY MR. CERSKI) You assist the  
 15:56:30 6 distributors in any manner to increase their sales?

15:56:33 7 A. **We expect that the distributor will**

15:56:42 8 increase the sales.

15:56:43 9 Q. Does Rotax give them suggestions on how to

15:56:46 10 do that within their market -- their territory?

15:56:51 11 A. No.  
 15:56:54 12 Q. Does Rotax provide them with any displays

15:57:01 13 or brochures or anything of that nature that would  
 15:57:06 14 help them advertise the product in their territory?  
 15:57:20 15 A. No.

15:57:20 16 Q. Does Rotax provide to its distributors

15:57:26 17 sample engines that they could use to display at  
 15:57:32 18 trade shows?

15:57:35 19 A. No.  
 15:57:58 20 Q- I can't remember if I asked this already  
 15:58:01 21 earlier this morning.

15:58:02 22 Does any Bombardier entity provide  
 15:58:07 23 capital to any of the aircraft distributors -

15:58:11 24 aircraft engine distributors for them to purchase the  
15:SB:14 25 Rotax engines?

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A. No.

15:58:57 2 0. I'm showing you what I've marked as Exhibit  
15:58:59 3 No. 8 -- and I'll fix that -- which is an affidavit  
15:59:06 4 in Simeon versus Bombardier-Rotax; however, it was  
15:59:10 5 filed in the state court action, which was in the  
15:59:13 6 Philadelphia County Court as opposed to this action.  
15:59:18 7 And this affidavit was taken by yourself, and I just  
15:59:23 8 have a couple of questions.  
15:59:45 9 (Discussion off the record, and  
15:59:47 10 witness reads document )  
16:01:05 11 Q. (BY MR. CERSKI): My first question is on  
16:01:08 12 No. -- Page 2, Paragraph 6, the last sentence here  
16:01:14 13 where it says, "Rotax does not know the destination  
16:01:19 14 of any particular engine or exercise any control over  
16:01:23 15 the engine," when you say you don't know the  
16:01:27 16 destination of any particular engine, do you mean you  
16:01:32 17 don't know when that engine leaves where -- where  
16:01:36 18 it's actually going to, any particular end user? Is  
16:01:41 19 that what you mean, or do you mean that when you send  
16:02:47 20 it to Kodiak, you have absolutely no idea where it  
26:01:51 21 may end up?  
16:01:57 22 A. According to the contract and the -- we  
16:02:01 23 have -- we have defined it in the contract, Rotax  
16:02:08 24 sells ex-works their products to the authorized  
16:02:14 25 distributor for Rotax aircraft engines, and from

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Josef Fuerlinger - December 3, 2004  
Examination by Mr. Cerski

16:02:17 1 there on -- that's the transfer of title of the  
16:02:20 2 products in Austria. They will take possession of  
16:02:24 3 the product in Austria. From there on we have no  
16:02:28 4 control over how the transport or where it -- the  
16:02:32 5 product goes.  
16:02:33 6 Q. But when it leaves Austria and it's going  
16:02:35 7 to Kodiak, Rotax understands that it's going to go  
16:02:41 8 somewhere in Kodiak's territory; is that correct?  
16:02:48 9 MR. KELLY: Object to the form.  
16:02:51 10 THE WITNESS: Well, we understand that  
16:02:53 11 Kodiak purchased in Austria their products.  
16:02:59 12 Q. (BY MR. CERSKI): And Kodiak sells the  
16:03:01- 13 engines in the United States, Central and South  
16:03:07 14 America?  
16:03:07 15 A. He sells engines in North, middle, and  
16:03:11 16 Central and South America.  
16:03:15 17 Q. Okay. So when the engine leaves Austria,  
16:03:19 18 it's going to go to one of those places?  
16:03:22 19 MR. KELLY: Object to the form.  
16:03:32 20 THE WITNESS: I don't know.  
16:03:47 21 Q. (BY MR. CERSKI): So you know that -- you  
16:03:48 22 know Kodiak's territory but yet you don't know where  
16:03:51 23 the product will be distributed to?  
16:03:58 24 A. What we know is that we sell the product  
16:04:05 25 ex-works from here to transfer of the title to our

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Josef Fuerlinger - December 3, 2004  
Examination by Mr. Cerski

16:04:10       1     authorized distributor, in this case to Kodiak  
 16:04:14       2     Research, Nassau, Bahamas; and he is then responsible  
 16:04:22       3     for the territory and for everything else what  
 16:04:24       4     happens. So we have no control over where the  
 16:04:28       5     product goes. It may end up in this territory in the  
 16:04:32       6     given distribution area or may end up somewhere else  
 16:04:38       7     Q.     would you anticipate it to end up in its -  
 16:04:42       8     in the territory that you assigned to Kodiak?  
 16:04:48       9     (Interpreter interprets)

16:04:50       10     THE INTERPRETER: "you  
 16:04:52       11     mean expect?  
 16:04:53       12     MR. CERSKI:           Yes.  
 16:04:54       13     THE INTERPRETER: "expose?"  
 16:04:55       14     MR. CERSKI:           No.

16:04:57       15     (Interpreter interprets)  
 1G:05:03       16     THE WITNESS: That's according to the  
 16:05:04       17     contract           where he can sell the products.  
 16:05:08       18     Q.     (BY MR. CERSKI: So you wouldn't expect  
 16:05:11       19     Kodiak to sell outside of its territory?  
 16:05:20       20     A.     Well, as I said before, in the contract is  
 16:05:22       21     very well defined in which territory Kodiak is  
 16:05:25       22     responsible.  
 16:05:26       23     Q.     Okay.  
 16:06:07       24     (Discussion off the record)  
 16:06:31       25     Q.     (BY MR. CERSKI): What does Rotax do to

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